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CONTENTS • INHOUD

No.		Page No.	Gazette No.
GENERAL NOTICE			
Trade and Industry, Department of			
General Notice			
2794	Broad-Based Black Economic Empowerment Act (53/2003): Publication of the draft code of good practice on broad-based black economic empowerment, for public comment.....	3	27076

GENERAL NOTICE

NOTICE 2794 OF 2004

DEPARTMENT OF TRADE AND INDUSTRY

PUBLICATION OF THE DRAFT CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT, FOR PUBLIC COMMENT

In terms of section 9(5) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), I, MANDISI MPAHLWA, Minister of Trade and Industry, do hereby publish the accompanying draft codes of good practice for public comment.

All interested persons are invited to submit, within sixty days from the date of this notice, written presentations to:

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MANDISI MPAHLWA, MP

MINISTER OF TRADE AND INDUSTRY



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

***THE CODES OF GOOD
PRACTICE ON BROAD-BASED
BLACK ECONOMIC
EMPOWERMENT***

INDEX TO THE CODES OF GOOD PRACTICE

<u>CODE/STATEMENT</u>	<u>DESCRIPTIONS</u>	<u>RELEASE DATE</u>
CODE 000	BLACK ECONOMIC EMPOWERMENT FRAMEWORK	DECEMBER 2004
Statement 000	Principles and Definition of Broad-based Black Economic Empowerment	December 2004
Statement 010	Sector Transformation Charters	December 2004
Statement 020	BEE Advisory Council	December 2004
Statement 030	Qualification, Measurement and Reporting Criteria for Broad-based Black Economic Empowerment	December 2004
Statement 040	Glossary	December 2004
Statement 050	Accreditation of BEE Rating Agencies	December 2004
CODE 100	EQUITY OWNERSHIP	DECEMBER 2004
Statement 100	Recognition and Measurement of Equity Ownership	December 2004
Statement 110	Indicative Ownership for Multinationals	TBA
Statement 120	Government Ownership	TBA
CODE 200	MANAGEMENT	DECEMBER 2004
Statement 200	Recognition and Measurement of Management	December 2004
CODE 300	EMPLOYMENT EQUITY	TBA
CODE 400	SKILLS DEVELOPMENT	TBA
CODE 500	PREFERENTIAL PROCUREMENT	TBA
CODE 600	ENTERPRISE DEVELOPMENT	TBA
CODE 700	RESIDUAL ELEMENT	TBA
CODE 800	BLACK ECONOMIC EMPOWERMENT PRACTICE NOTE	TBA
CODE 900	PUBLIC PRIVATE PARTERSHIPS	August 2004(Public comment completed)

CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**STATEMENT 000:
PRINCIPLES AND DEFINITIONS OF BROAD-BASED BEE****Abstract**

This statement outlines the key principles underpinning broad-based black economic empowerment (Broad-based BEE).

The definition of broad-based BEE is provided, together with a detailed discussion of the major components and elements of broad-based BEE, highlighting the beneficiaries of each component and specifying their role in the BEE balanced scorecard.

This statement also summarises the BEE indicators, weightings and targets that are used to determine the BEE score for each of the seven elements in the scorecard. The statements also provide guidelines for the application of the scorecard.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures, together with the related guidance, it is necessary to consider the whole text, not only specific sections of the Codes that are highlighted. The practitioner cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

December 2004

CONCEPTUAL FRAMEWORK – PRINCIPLES AND DEFINITIONS OF BROAD-BASED BEE

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION.....	
<i>Background to B-BBEE.....</i>	<i>01 - 04</i>
<i>Purpose of the Codes of Good Practice.....</i>	<i>05</i>
<i>Status of the Codes of Good Practice.....</i>	<i>06 - 07</i>
<i>Scope and objectives.....</i>	<i>08 - 10</i>
DEFINITIONS	11
KEY PRINCIPLES UNDERPINNING BROAD-BASED BEE	12
<i>BEE is broad-based</i>	<i>13 - 14</i>
<i>BEE is an inclusive process.....</i>	<i>15 - 17</i>
<i>BEE is part of South Africa's growth strategy</i>	<i>18 - 20</i>
<i>Measurability</i>	<i>21 - 22</i>
<i>Sound economic principles</i>	<i>23 - 24</i>
<i>Substance over form.....</i>	<i>25 - 26</i>
<i>Comparability</i>	<i>27 - 28</i>
<i>Reliability.....</i>	<i>29</i>
<i>Completeness</i>	<i>30</i>
<i>Timeliness.....</i>	<i>31 - 34</i>
BROADBASED BEE	
<i>Definition of broad-based BEE.....</i>	<i>35 - 40</i>
<i>Key Components of broad-based BEE</i>	<i>41 - 44</i>
<i>Key Elements of broad-based BEE</i>	<i>45 - 55</i>
<i>Distinction between broad-based BEE and broad-based ownership</i>	<i>56</i>
BEE BALANCED SCORECARD.....	57
APPLICATION OF THE BROADBASED BEE SCORECARD	58-60
<i>Discount provisions</i>	<i>61</i>
<i>Bonus provisions.....</i>	<i>62</i>

Introduction

Background to Broad-based Black Economic Empowerment

1. *The Broad-Based Black Economic Empowerment Act no. 53 of 2003 and Government's Black Economic Empowerment Strategy, aim to address inequalities resulting from the systematic exclusion of the majority of South Africans from meaningful participation in the economy.*
2. *One of the defining features of Apartheid was the use of race to control and severely restrict black people from access to economic opportunities and resources.*
3. *The under-development of black South Africans was characterised by the progressive destruction of productive assets; deliberate denial of access to skills and jobs; and the undermining of self-employment and entrepreneurship. In combination with one another, these policies restricted and suppressed wealth and skill endowments in black communities; thereby structurally inhibiting their participation in a de-racialised economy. It is a testimony to the vitality of black society that black people have managed to achieve what has been achieved.*
4. *Government's strategy for broad-based black economic empowerment looks beyond the redress of past inequalities and aims to position BEE as a tool to broaden the country's economic base and accelerate growth, job creation and poverty eradication.*

Purpose of the Codes of Good Practice

5. *The purpose of the Codes of Good Practice is to assist and advise both the public and private sectors in their implementation of the objectives of the Broad-based Black Economic Empowerment (Broad-Based BEE) Act. The Codes of Good Practice provide principles and guidelines that would facilitate and accelerate the implementation of broad-based BEE in a meaningful and sustainable manner.*

Status of the Codes of Practice

6. *In accordance with the Act, every organ of state and public entity must take into account, and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of the abovementioned Act in:*
 - a) *determining qualification criteria for the issuing of licenses, concessions and or other authorisations in terms of any law,*
 - b) *developing and implementing a preferential procurement policy,*
 - c) *determining qualification criteria for the sale of state-owned enterprises, and*
 - d) *developing criteria for entering into partnerships with the private sector.*
7. *Furthermore, private sector enterprises must consider the principles and guidance as contained in the Codes of Good Practice when implementing BEE initiatives, as these would outline the key expectations of organs of state and public entities in their economic interactions.*

Scope and Objectives

8. *The scope and objectives of this statements are as follows:*
 - a) *to define broad-based BEE,*
 - b) *to state the fundamental principles underpinning Broad-Based BEE,*
 - c) *to specify some of the key principles for the implementation, recognition, measurement and reporting of BEE,*
 - d) *to outline the key components and elements of broad-based BEE,*
 - e) *to provide a summary of the balanced BEE scorecard,*
 - f) *to provide a guideline for the application of the balanced BEE scorecard.*
9. *This statement provides an overall summary of the balanced BEE scorecard, whilst the recognition and measurement of the specific elements of broad-based BEE are covered in the specific Code of Good Practice pertaining to each element.*
10. *This statement applies to, and guides, all broad-based BEE initiatives conceived and implemented by organs of state and public entities, as well as providing guidance to those considered by private sector enterprises.*

Definitions and Interpretation

11. The following terms are used in this Code and their meanings are specified below:

Black people is as defined in 040: Glossary to the Code of Good Practice.

Black economic empowerment (BEE) is defined as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people who manage, own and control the country's economy, as well as significant decreases in income inequalities.

Broad-based black economic empowerment (broad-based BEE) means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies, that include, but are not limited to:

- a) increasing the number of black people who manage, own and control enterprises and productive assets,
- b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,
- c) human resource and skills development
- d) achieving equitable representation in all occupational categories and levels in the workforce,
- e) preferential procurement, and
- f) investment in enterprises that are owned or managed by black people.

Organ of state means a national or provincial department as defined in the Public Finance Management Act, 1999 (PFMA); a municipality as contemplated in the Constitution; Parliament; a provincial legislature; and constitutional institutions listed in Schedule 1 of the PFMA, as well as other major public entities listed in Schedule 2 and 3 of the PFMA.

Fundamental Principles underpinning Broad-based BEE

12. It is essential that all BEE initiatives embody the principles outlined below, to ensure that the BEE process is implemented and accelerated in a meaningful and sustainable manner. These principles set out the necessary foundation for the substantive implementation of Broad-based BEE in an enterprise.

Black Economic Empowerment is Broad-Based

13. The broad-based BEE process seeks to accelerate the de-racialisation of the South African economy and to fast track the re-entry of historically marginalised communities into the mainstream of the economy.
14. The broad-based BEE process also ensures that both its application instruments and the beneficiaries are broad-based. This is achieved using a balanced approach that includes contributions and measures that address ownership, management, employment equity, skills development, preferential procurement, enterprise development and other residual elements of the broad-based BEE scorecard.

Black Economic Empowerment is an inclusive process

15. A more equitable economy will benefit all South Africans. The process of BEE is an inclusive one, and all enterprises operating within South Africa can, and indeed should, participate in this process.
16. All enterprises, irrespective of the racial categorisation of its equity holders and management, can contribute toward the elements of the broad-based BEE process. The level of contribution is recognised and measured in terms of the balanced scorecard presented in this statement.
17. No economy can grow by excluding any part of its people and an economy that is not growing cannot economically integrate its citizens in a meaningful way. This strategy will be implemented across all sectors in the economy and is not limited only to those sectors and enterprises that derive their income from government procurement or to those that are regulated directly by government.

Black Economic Empowerment is part of South Africa's growth strategy

18. *Economic growth, development and BEE are complementary processes. The Act and the Strategy stress a BEE process that is associated with growth, development and enterprise development, and not merely the redistribution of existing wealth.*
19. *The de-racialisation of our economy is geared towards enhancing the economic growth of South Africa. In accordance with this principle, BEE will be pursued in such a way as to ensure that where contributions are made and where benefits are transferred, the proceeds are re-invested in the South African economy.*
20. *In order to grow our economy, more enterprises are needed. These enterprises will be able to:*
- a) produce more value-added goods and services,*
 - b) attract investment, and*
 - c) employ more of our people in productive activities.*

Thus, a core component of the BEE strategy is the creation and nurturing of new enterprises undertaking new forms of economic value-added activities. The strategy seeks to facilitate new entrants into the economy.

Key Principles for the Implementation, Recognition, Measurement and Reporting of Broad-Based BEE***Measurability***

21. *All BEE initiatives must be measurable in order to achieve the objectives of broad-based BEE. Measuring the impact of BEE initiatives is critical in determining the progress made by enterprises, sectors and the economy as a whole, in the achievement of broad-based BEE objectives. Measurement also facilitates target setting, which is essential for the robust implementation of different broad-based BEE initiatives.*

22. *Measurability may encompass both quantitative and qualitative factors, which should be taken into account when assessing the achievement of the objectives of broad-based BEE. It is important to ensure that quantitative and qualitative factors of broad-based BEE initiatives are measured, and that they are both factual and reliable.*

Sound Economic Principles

23. *For the BEE process to be sustainable, and for it to contribute meaningfully to the economic growth of South Africa, it must adhere to sound economic principles. Sound economic principles are the fundamental principles that govern the efficient and effective functioning of economies and are supported by rigorous empirical testing and broad application both globally and locally.*

24. *Examples of sound economic principles, with particular reference to broad-based BEE include, but are not limited to, the following:*

- a) Risk and reward relationship, where there is a particular reward, it is commensurate with the risk assumed,*
- b) Skills are developed based on the needs analysis identified by the enterprise,*
- c) New enterprises are developed to achieve sustainable business objectives, rather than as a mechanism to circumvent BEE related requirements.*

Substance over Form

25. *Broad-based BEE initiatives must be accounted for and presented in accordance with their substance and economic reality and not merely their legal form. It is the evaluation of the substance of BEE initiatives that will ensure that substantive and meaningful progress is made toward achieving the objectives of broad-based BEE.*

26. *The substance of the BEE initiatives is not always consistent with that which is apparent from their legal or contrived form. Each statement of the Code of Good Practice will address the practical application of this key principle as it pertains to the BEE element relevant to that specific code.*

Comparability

27. *There must be uniformity in how BEE initiatives are recognised and measured, in order to compare the progress made by an enterprise in different reporting periods,*

as well as to facilitate the comparison of BEE progress between different enterprises. Comparability is enhanced when recognition, measurement and disclosure of BEE initiatives is performed in a consistent manner across enterprises, sectors and the economy as a whole.

28. The Codes of Good Practice standardises the definitions, recognition criteria and measurement principles across enterprises and sectors to ensure the comparability of BEE measurement. Institutions, including an accredited BEE rating agency, will also ensure that BEE measurements are conducted in a sound, objective and consistent manner.

Reliability

29. To be useful, information pertaining to broad-based BEE initiatives must also be reliable. Information has the quality of reliability when it is free from material error and bias and can be depended upon by any users to represent faithfully that which it either purports to represent or could reasonably be expected to represent. Independent verification of information will enhance the reliability of BEE information.

Completeness

30. To be reliable, the information pertaining to broad-based BEE initiatives must be complete, in order to assess the extent and depth of the initiatives. An omission can cause information to be false or misleading and thus unreliable and deficient in terms of its relevance.

Timeliness

31. Information relating to broad-based BEE initiatives must be provided on a timely basis to enable the users thereof to make the relevant economic decisions. To provide information on a timely basis it may often be necessary to report before all aspects of a transaction or event are known, despite the fact that this may impair reliability in the short term.
32. Conversely, if reporting is delayed until all aspects are known, the information may be highly reliable but of little use to users who have had to make decisions in the interim.

33. *In achieving a balance between relevance and reliability, the overriding consideration is how best to satisfy the economic decision-making process of the users of BEE information.*
34. *Timeliness also applies to the timely reporting of the termination of BEE initiatives and structures. The continued reporting of the existence and extent of specific BEE initiatives after their termination is contrary to the principles of broad-based BEE.*

Definition of Broad-Based Black Economic Empowerment

35. *BEE is an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities.*
36. *Broad-based black economic empowerment (Broad-Based BEE) means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies, that include, but are not limited to:*
- a) increasing the number of black people that manage, own and control enterprises and productive assets,*
 - b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,*
 - c) human resource and skills development,*
 - d) achieving equitable representation in all occupational categories and levels in the workforce,*
 - e) preferential procurement, and*
 - f) investment in enterprises that are owned or managed by black people.*
37. *The above definition expands on the nature of broad-based beneficiaries and must be interpreted in conjunction with the definition of black people. This effectively means that broad-based beneficiaries shall be black people, who would encompass the following:*
- a) black women,*

- b) *black workers,*
- c) *black youth,*
- d) *black people with disabilities and*
- e) *black people living in rural areas.*

38. *In interpreting and measuring broad-based BEE, a balanced scorecard is applied which includes core components such as direct empowerment, human resource development and indirect empowerment. These key areas of leverage constitute the key components of broad-based BEE.*

39. *The components may be further sub-divided into the seven elements of black economic empowerment which include equity ownership, management, employment equity, skills development, preferential procurement, enterprise development and other residual elements.*

40. *The definition of broad-based BEE demonstrates the broad-based nature of the process, as both the beneficiaries (as defined in paragraph 37), and the implementation and measurement instruments are broad-based (as defined in paragraph 38 and 39)*

The Components and Elements of Broad-Based Black Economic Empowerment

41. *The three components of broad-based BEE each correspond to a specific beneficiary, namely:*

<i>Component</i>	<i>Beneficiary</i>
a) <i>Direct Empowerment</i>	<i>Equity holders, executives and other owners and managers of economic resources</i>
b) <i>Human Resource Development</i>	<i>Employees and job seekers</i>
c) <i>Indirect Empowerment</i>	<i>Suppliers, communities and other relevant external stakeholders</i>

42. *The direct empowerment component is comprised of the equity ownership and management element of the scorecard. The key focus of the direct empowerment component is its economic impact on the equity holders, executives and other owners and managers of economic resources. The beneficiaries assume direct economic risk for their involvement and expect returns that are commensurate to that risk.*
43. *The Human Resource Development (HRD) component also comprises two elements; namely employment equity and skills development. The focus of this component is the internal transformation that will accelerate the development of the enterprise's black employees, as well as the potential employees of the enterprise. The HRD component will ensure that there is demographic representation of black people in the workplace and will prevent income inequality across the different population groups in the same occupational category or at the same skills level. The component also measures the contributions made by enterprises to advance the skills of its employees.*
44. *The indirect empowerment component enables and encourages an enterprise to facilitate broad-based BEE in entities and within the communities with which it interacts. The elements of preferential procurement, enterprise development and other residuals are recognised and measured. Preferential procurement promotes broad-based BEE by allocating preference to enterprises with higher broad-based BEE contributions. This is also an effective way of creating market access for black entrepreneurs. Entrepreneurs are further supported through enterprise development which assists with the creation and enhancement of the entrepreneur's operational and financial capacity. Black communities also gain from broad-based BEE through social development, which focuses on education, health and other relevant social development areas.*

Key Elements of Broad-Based BEE

45. *There are seven key elements that are pillars to broad-based BEE. These elements provide a common base for measuring the impact of policy objectives of broad-based BEE across different entities and sectors with the economy.*

Ownership

46. *Ownership recognises and measures the entitlement of black people to the voting rights and economic interest associated with equity holding. Voting rights afford the rights to determine strategic and operational policies of an enterprise, while economic interests result in the rebuilding and accumulation of wealth by black people. All economic interests or voting rights that are subject to specific restrictions as outlined in Statement 100 are excluded from the scorecard.*
47. *Statement 100 on equity ownership proposes the measurement of ownership with respect to voting rights and economic interest. The rights and economic interest, however, may be limited due to financing and analogous arrangements. The series of statements in Code 100 of the Code of Good Practice details various principles and criteria to be applied in the determination of an ownership interest in accordance with the scorecard. The key principles include the flow-through principle, restrictions and the definitions of voting rights and economic interest.*
48. *Code 100 also guides the recognition and measurement of ownership in specific circumstances, including Government equity holding in an enterprise and some provisions for indicative ownership score for multinationals.*

Management

49. *Management control refers to the effective control of economic activities and resources. This involves the power to determine policies as well as the direction of economic activities and resources. Management control is exercised through the governing bodies of an enterprise and is normally measured at two levels:*
- a) board of directors (equivalent structure), where the determination of strategies, policies and direction of the economic activities and resources is made,*

- b) *executive management or highest executive body after the board of directors or equivalent structure, which is entrusted with the day to day management of the enterprise's economic activities and resources.*

The series of statement in Code 200 of the Code of Good Practice, detail the various criteria to be applied in the determination of the management of an enterprise

Employment Equity

50. Employment equity is a mechanism used to achieve equity in the workplace by:

- a) *promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination, and*
- b) *implementing affirmative action measures to redress the disadvantages in employment experienced by black people, in order to ensure their equitable representation in all occupational categories and levels in the workplace.*

51. Entities are required to comply with the spirit and the provisions of the Employment Equity Act to bring about an equitable representation of black persons at all occupational and skills levels in organisations over a period of time. The underlying principle behind employment equity is to foster the active involvement of black people in the operational, professional and executive decision-making processes in their employing entities. The series of statements in Code 300 of the Code of Good Practice outline the various criteria to be applied in determining the level of employment equity of the enterprise.

Skills Development

52. Skills development, in the context of this code, refers to the development of core competencies of black people to facilitate their interaction in the mainstream of the economy. It is imperative that there be a focus on core and technical skills that would enable black people to participate in the wider economy in a meaningful manner. The series of statements in Code 400 of the Code of Good Practice outlines the various criteria to be applied in determining the level of skills development within an enterprise.

Preferential Procurement

53. *Preferential procurement is a measure designed to widen market access for entities, in order to integrate them into the mainstream of the economy. Preferential procurement encourages and facilitates the adoption of broad-based BEE by aligning business imperatives to broad-based BEE. Preferential procurement will create economic empowerment benefits indirectly but meaningfully as it multiplies the effects of private and public sector intervention to promote broad-based BEE. The series of statement in Code 500 of the Codes of Good Practice outlines the various principles to be applied in the determination and measurement of the level of preferential procurement within an enterprise*

Enterprise Development

54. *The enterprise development element aims at assisting and accelerating the development of the operational and financial capacity of entrepreneurial enterprises who contribute towards broad-based BEE. The primary beneficiaries of enterprise development are the small and medium enterprises owned and controlled by black people. The measures range from direct financial assistance to non-monetary support provided to entrepreneurial enterprises. The series of statement in Code 600 of the Codes of Good Practice outlines the various principles and criteria to be applied in the determination of the level of enterprise development within an enterprise*

Residual factor

55. *This element allows other factors that may accelerate broad-based to be taken into account and included at the discretion of the specific sector or enterprise. Sectors and entities are encouraged to consider some of the following in their broad-based BEE initiatives:*

- a) infrastructural support to suppliers and other enterprises in the same area or community*

- b) *labour-intensive production and construction methods*
- c) *beneficiation*
- d) *investment and support to enterprises operating in rural communities and the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme*
- e) *investment in the social wage of employees (for example, housing, transport, and health care)*

Distinction between Broad-based BEE and Broad-based Ownership

56. *There is a clear distinction between broad-based BEE and broad-based ownership. Broad-based ownership refers to equity ownership held by a broader base of beneficiaries and is thus limited to the equity ownership element of the broad-based BEE scorecard. Broad-based BEE is far-reaching in its effect as it covers all the major components and elements of BEE. Broad-based BEE also supports a wider network of beneficiaries who benefit from the three different components. Broad-based ownership is only one of the seven elements of broad-based BEE.*

Broad-Based BEE Balanced Scorecard

57. *The following is the summary tabulation of the broad-based BEE balanced scorecard. The relevant concept and construct for the application of the scorecard includes:*

- a) *Core Components*
- b) *BEE Elements*
- c) *Weighting*
- d) *Code References*
- e) *Indicators*
- f) *Indicator Weighting:*
- g) *Targets*
- h) *Bonus and Preferential Weighting Provisions*
- i) *Sub-Minimum Score*

Core Component	BEE Elements	Code Ref.	Weighting	Indicators	Indicator Weighting	Targets	Sub-minimum	Bonus/ Preferential Weighting Provisions
Direct Empowerment	Ownership	BEE 100	20%	Unrestricted Voting Rights in the Enterprise in the hands of Black people	3%	25% + 1 vote		Introduction of new entrants and BEE ownership in excess of target
				Unrestricted Voting Rights in the Enterprise in the hands of Black women	2%	10%		
				Economic Interest in the Enterprise to which Black people are entitled	4%	25%		
				Economic Interest in the Enterprise to which Black women are entitled	2%	10%		
				Economic Interest in the Enterprise to which Black designated groups are entitled	1%	2.5%		
				Level of Unrestricted entitlement of Black people to receive their Economic Interest in the Enterprise (as percentage of total ownership)	8%	25%		
	Management	BEE 200	10%	Weighted Management Representation Scorecard (See BEE 200)	10%	40%		Women Management, Different management positions weighed according to seniority and executive involvement
Human Resources Development	Employment Equity	BEE 300	10%	Weighted Employment Equity Scorecard (See BEE 300)	10%	50%		Women representation
	Skills Development	BEE 400	20%	Investment in Skills Development (in addition to skills development levy), as a percentage of payroll	15%	3%		Fast-track programs for black employees and management. Provision of skills development programs and learnership in priority skill areas.
				Learnership- learnership positions (as a percentage of employees)	5%	3%		
Indirect Empowerment	Preferential Procurement	BEE 500	20%	Affirmative Procurement from Excellent BEE Contributors (BEE Percentage Score as per scorecard, between 80 and 100 points)	18%	50%		- Procurement from excellent contributors (recognized at R 1.25 for every R1 of spend) - Procurement from good contributors (recognized at R 1 for every R1 of spend) - Procurement from satisfactory contributors (recognized at 50c for every R1 of spend)
				Affirmative Procurement from Good BEE Contributors (BEE Percentage Score between 65 and 79)				
				Affirmative Procurement from Satisfactory BEE Contributors (BEE Percentage Score between 45 and 65)				
				Implementation of robust, independent verification and reporting mechanism to avoid fronting	2%	Mechanism which verify BEE status of suppliers reported under preferential procurement and utilization of dtl approved accreditation agencies		
	Enterprise Development	BEE 600	10%	Monetary Investment in SMME with excellent or good BEE contributions (as percentage of Net Asset Value/EBITDA/Total Procurement)	8%	5% - 10% (depending on base used)		The sum percentage score achieved through monetary investment and quantifiable non-monetary support are summed to arrive at the enterprise development points. (The maximum achievable percentage score for enterprise development is 10)
				Quantifiable non-monetary support to SMME with excellent or good BEE contributions (as percentage of Net Asset Value/EBITDA/Total Procurement)	2%	2% - 5% (depending on base used)		
	Residual Element	BEE 700	10%	Industry specific initiatives to facilitate the inclusion of black people in the sector (as a percent of net profit)	10%	3%		Total contribution towards these initiatives are summed relative to net profit of an enterprise. The total achievable percentage score for these initiatives is 10. (Initiatives that does not promote the empowerment of black people are specifically excluded)
Industry specific initiatives to promote black economic empowerment (as a percent of net profit)								
Corporate social investment initiatives in health, education, poverty alleviation and community development(as a percent of net profit)								
Total	Element Weighting		100%	Indicator Weighting	100%	Sub-Minimum		

Application of the Broad-based BEE Balanced Scorecard

58. When applying the broad-based BEE scorecard to design, implement, measure and report on broad-based BEE, one will need to understand and apply all principles presented in the Code of Good Practice, especially those relating to the specific element measured. The raw score for each indicator on the scorecard is determined based on the set targets.
59. The percentage score for each element is determined by multiplying the raw score to weightings applicable to the individual elements or indicators. The sum of all indicators for a specific BEE element is the percentage score for that BEE element.
60. In BEE elements that are subject to a sub-minimum score, no BEE score will be accorded for that specific element if the total element score is less than the sub-minimum score.

Discount Provisions

61. In circumstances where an enterprise does not achieve the sub-minimum score for ownership, the element score it has achieved, after applying the sub-minimum, will be multiplied by a factor of seventy-percent to arrive at the broad-based BEE percentage score for the enterprise.

Bonus Provisions

62. The total weighting applicable to each element is as presented on the BEE scorecard. An enterprise cannot be awarded an element percentage score higher than the weightings for that element, except in the case where it has been specifically provided as a bonus provision in addition to the weightings. The bonus provision for ownership in statement 100 provides an example of this.

CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**STATEMENT 010:
SECTOR TRANSFORMATION CHARTERS****Abstract**

This statement outlines both the key processes to be followed when formulating a sector transformation charter as well as the key principles that must be applied to harmonise the different charters.

Key issues around Charter Councils' composition, powers and reporting mechanisms are also explored. The statement also explores the effects of publishing sector transformation charters in the Gazette, either as a Sector Transformation Charter, as defined in section 12 of the Act, or as a Code of Good Practice, as defined in section 9 of the Act.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

December 2004

Sector Transformation Charters**CONTENTS***Paragraphs*

INTRODUCTION	
<i>Background to Sector Transformation Charters....</i>	<i>01 - 03</i>
<i>Purpose of the Codes Good Practice.....</i>	<i>04</i>
<i>Status of the Codes of Good Practice.....</i>	<i>05 - 06</i>
<i>Scope.....</i>	<i>07 - 08</i>
OBJECTIVES	09
DEFINITIONS AND INTERPRETATIONS	10
TRANSFORMATION CHARTER PROCESS	11 - 13
<i>Qualification criteria</i>	<i>14</i>
<i>Consultation process</i>	<i>15 - 18</i>
<i>Charter negotiation and drafting process</i>	<i>19 - 25</i>
HARMONISATION OF CHARTERS.....	26
<i>Contents of the charter.....</i>	<i>27</i>
<i>Guidelines on the setting of indicators</i>	<i>28 - 29</i>
<i>Guidelines on the setting of targets.....</i>	<i>30 - 31</i>
<i>Setting the BEE scorecard weighting.....</i>	<i>32 - 35</i>
CHARTER COUNCILS.....	36
<i>Composition of the Charter Council</i>	<i>37 - 38</i>
<i>Powers of the Charter Councils</i>	<i>39 - 41</i>
<i>Annual reporting of the Charter Councils to the dti and the BEE Council</i>	<i>42</i>
GAZETTING OF CHARTERS	43 - 47
<i>Enterprise Charters and black economic empowerment plans</i>	<i>48</i>

APPENDIX

Introduction

Background to Sector Transformation Charters

1. *Government recognises that its BEE strategy will not be effective if it does not have the support of the private sector. Partnerships between government and the private sector, including trade unions and community-based organisations, represent a key ingredient for the formulation and implementation of BEE programmes at different levels and in different sectors of our economy.*
2. *Partnerships refer to structured collaboration between government and the private sector for the sustainable achievement of BEE. Government will actively seek the establishment of innovative partnerships with the private sector, built around the specific circumstances of different sectors and enterprises. The complexity of the different sectors requires a flexible approach that will allow each sector to determine the form and manner in which it will contribute to BEE within the broad parameters outlined in the legislation.*
3. *Sector charters are one of the forms that such partnerships could take. Such charters would need to include specific mechanisms to achieve BEE objectives in that particular sector or enterprise in a comprehensive and appropriate manner, as well as advising on appropriate measurement indicators and targets to the sector. The Broad-based Black Economic Empowerment Act, no. 53 of 2003 provides for the formulation of transformation charters for particular sectors of the economy.*

Purpose of the Codes of Practice

4. *The purpose of the Codes of Practice is to guide both the public and private sectors in their implementation of the objectives of the Broad-Based Black Economic Empowerment (Broad-based BEE) Act. The Codes of Good Practice provide principles and guidelines that would be used to accelerate Broad-based BEE in a meaningful and sustainable manner. This particular Statement is aimed at highlighting the principles that apply to transformation charters formulated by particular sectors.*

Status of the Codes of Practice

5. *In accordance with section 10 of the Broad-based Economic Empowerment Act No. 53 of 2003, every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant Code of Good Practice issued in terms of the abovementioned Act in:*
 - a) *determining qualification criteria for the issuing of licences, concessions and/or other authorizations in terms of any law,*
 - b) *developing and implementing a preferential procurement policy,*
 - c) *determining qualification criteria for the sale of state-owned enterprises and*
 - d) *developing criteria for entering into partnerships with the private sector.*
6. *Furthermore, the private sector must take into account the principles and guidance contained in this Statement when formulating or reformulating transformation charters to be in line with the Broad-based BEE Act objectives.*

Scope

7. *This Statement deals with:*
 - a) *the key qualification criteria to be taken into account before the transformation charter is formulated,*
 - b) *the outline of the transformation charter process, and*
 - c) *the principles and guidelines to be adhered to by the Charter Councils.*
8. *This Code of Good Practice applies to all transformation charters that are currently in place, in process or that will be contemplated in the future.*

Objectives

9. *The objectives of this Statement are:*
 - a) *to outline the process to be followed in formulating sector transformation charters,*
 - b) *to identify principles to be applied in the harmonisation of the different transformation charters and*
 - c) *to describe the process of constituting Charter Councils and prescribe the powers of these Councils.*

Definitions and Interpretation

10. The following terms are used in this Statement with the meanings specified below:

The Act: *the Broad-Based Black Economic Empowerment Act, no. 53 of 2003*

Accredited BEE Rating Agencies: *is defined in Statement 040: Glossary to the Code of Good Practice*

The Codes of Good Practice: *refers to the Codes of Good Practice as contemplated by section 9 of the Act*

dti: *Department of Trade and Industry*

Organ of state: *as defined in statement 040: Glossary to the Codes of Good Practice*

The Strategy: *refers to the Broad-based Black Economic Empowerment Strategy published by the Department of Trade and Industry under section 11 of the Act.*

Transformation Charter: *defined in statement 040: Glossary to the Codes of Good Practice*

Transformation Charter Process

11. The sector that interacts and/or transacts with any organ of state in the following areas shall be strongly encouraged, subject to the qualification criteria in paragraph 14, to formulate a sector transformation charter in order to accelerate the fulfillment of the objectives of broad-based BEE. These include sectors which:

- a) contract with any organ of state for the provision of goods and services,
- b) benefit from concessions or trade incentives offered by any organ of state,

- c) *enter into public or private partnerships with any organ of state,*
- d) *are subject to licensing from any organ of state,*
- e) *are regulated by any organ of state, or*
- f) *have any other economic interaction with any organ of state.*

12. *It is not expected that every sector will develop empowerment charters. However, those sectors outlined in paragraph .11 will be strongly encouraged to develop charters that set specific BEE targets and outline concrete plans to achieve these targets*

13. *The charter formulation process is outlined in Appendix One.*

Qualification Criteria

14. *The qualification criteria for the **sector transformation charter** is as follows:*

- a) *The sector must interact or transact with the organs of state as outlined in paragraph .11.*
- b) *There must be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a sector charter.*
- c) *The sector must be significant in terms of:*
 - i. *the national strategic importance of the sector as determined by government, or*
 - ii. *the volume and value of transactions taking place between the sector and the organs of state collectively - this shall be measured in relation to the total volume and value of transactions taking place within the sector.*

Consultation process

15. *For any transformation charter to be widely accepted as credible, there must be a sufficiently comprehensive consultation process with the relevant stakeholders in the sector. This is necessary to ensure that all the relevant views and suggestions are taken into account before the finalisation of the charter process.*

16. Consultation is a process of interacting with, and informing, the relevant stakeholders of the sector about the objectives, principles and measurement criteria of the sector transformation charter. The consultation process may be undertaken in one or more of the following ways:

- a) a major gathering of the key stakeholders in the sector,*
- b) workshops addressing particular issues to be dealt with in the transformation charter,*
- c) roadshows around the business boundaries of the sector and/or*
- d) other interactive mechanisms that would ensure that the relevant stakeholders were informed and their views acknowledged.*

17. The relevant stakeholders may include the following:

- a) key enterprises within the sector,*
- b) industry bodies for the sector or the relevant chamber of commerce,*
- c) Government, referring to the relevant government department(s) that interface(s) with the particular sector,*
- d) labour bodies or the relevant trade unions,*
- e) industry watchdogs,*
- f) others with a relevant interest in participating in the sector.*

18. The relevant stakeholders must be informed and involved in the key strategic processes of the charter process, especially in the following stages:

- a) setting the mandate for the Charter Steering Committee so it can start the charter process,*
- b) the outlining of the key principles to be contained in the charter,*
- c) the setting of targets for the sector as contained in the BEE Scorecard,*
- d) the presenting of the charter to the BEE Council and to Minister of Trade and Industry.*

Charter negotiation and drafting process

19. *There must be a balance among the negotiating parties. This means that there must be an equitable representation of the different stakeholders as outlined in paragraph 17 throughout the negotiation process.*
20. *There is a difference between an engagement with the negotiating partners and a consultation with the sectors' relevant stakeholders. The negotiating partners' engagement involves a substantive and intense involvement in the formulating and drafting of the transformation charter's principles and measurement criteria; whereas consultation involves the interaction with, and informing of, all the relevant stakeholders of the output of the negotiating partners' engagement process.*
21. *The lack of resources may make it difficult for all the relevant stakeholders to participate in the negotiation process. However, this may not be used as a mechanism to exclude other participants from the negotiation process. It is incumbent upon all the relevant negotiating stakeholders to invest, both in terms of time and financial resources, in the charter process, as this will have a direct impact on the daily activities of all participants. To alleviate the lack of resources, the sector must find ways to raise the appropriate resources to involve all the stakeholders in the negotiation process, without abrogating the investments that would be made by all the relevant participating stakeholders in the charter process.*
22. *The negotiations must be conducted in good faith with the aim of accelerating the implementation of broad-based BEE.*
23. *In order to efficiently formulate the charter, the participants may decide to appoint a Steering Committee to drive the process forward. This Steering Committee will be the representative body of the sector in all matters relating to the charter. There must be an equitable representation of the sector participants and the relevant stakeholders within the Steering Committee to ensure that the views of the different participants are taken into account.*
24. *The Steering Committee may utilise working groups to explore, in a detailed manner, issues that are contained in the transformation charter. The working groups may be*

divided according to the elements of the balanced BEE scorecard. Within the working groups there must be an equitable representation of the key stakeholders in the sector.

- 25. The mandate and the powers of the Steering Committee must be prescribed by the sector at the beginning of the charter process. This prescription shall also include the mandate and the powers of the working groups working under the Steering Committee.*

Harmonisation of the different charters

- 26. It is important to ensure that there is comparability among the different charters so as to assess progress made by the different sectors. The key elements of the charter that require harmonisation are:*

- a) the content of the charter,*
- b) indicators for the different elements of the balanced BEE scorecard,*
- c) targets for the different elements of the balanced BEE scorecard and*
- d) the weightings of the different elements of the balanced BEE scorecard.*

Content of the Charter

- 27. Sector charters should incorporate the following:*

- a) the BEE challenges in that sector,*
- b) the sector's vision for achieving BEE targets and timetables,*
- c) the specific mechanisms to be used to achieve BEE targets including financing instruments, skills development and employment equity, preferential procurement and enterprise development, as well as any additional mechanisms appropriate to the specific sector,*
- d) an assessment of the financing required to fund BEE transactions,*
- e) the institutional and management mechanisms that will co-ordinate, facilitate, monitor and evaluate the implementation of the charter, and*
- f) any other relevant issues and commitments relevant to the sector, in order to enable its participants to advance the objectives of broad-based BEE.*

Guidelines on the setting of indicators

28. *The indicators for the different elements of the broad-based BEE Scorecard shall be set out in the particular Code of Practice relating to the element.*
29. *The sectors may suggest different indicators from the ones outlined in the particular Code of Practice if they can show the following:*
- a) the suggested indicator can best measure the sector's contribution to that element of broad-based BEE,*
 - b) the suggested indicator reflects the key drivers within the sector related to that element of broad-based BEE,*
 - c) the suggested indicator is in line with sound economic principles, and*
 - d) reasons to support how the currently required indicator, as per the Code of Practice, does not measure the particular element of broad-based BEE adequately*

Guidelines on the setting of targets

30. *Targets that are contained within the charter must be in line with the recommended targets set out in the Code of Practice on targets.*
31. *There must be adequate justification if a target set in the sector charter scorecard differs significantly from the generic scorecard as presented in Statement 000.*

Setting the Broad-Based BEE Scorecard Weightings

32. *The overall weightings attached to the different elements of the scorecard must follow the recommendation of the dti and the generic scorecard as presented in Statement 000 of the Codes of Good Practice.*
33. *There can be no deviations of more than 10% from the dti's suggested weighting of the different components. There must be adequate justification as to why there should be departure from the suggested weightings.*
34. *The minimum weighting per element of the scorecard should be 5 percent.*

35. *The total weighting for each individual core component, i.e. direct empowerment, human resources development and indirect empowerment, should remain constant as per the generic scorecard in statement 000.*

Charter Councils

36. *The Charter Councils are a useful mechanism to ensure that there is an effective monitoring of charter implementation at the sector level.*

Composition of the Charter Councils

37. *There must be an equitable composition of stakeholders, as outlined in paragraph 17 of the Charter Council.*
38. *Good corporate governance principles must be applied in the daily functions of the Charter Council*

Powers of the Charter Council

39. *The sector must set out the mandate and the powers of the Charter Council in consultation with the relevant stakeholders in the sector. The mandate and the powers of any Charter Council must be set in consultation with the Department of Trade and Industry (dti). Final approval of the mandate and powers of the Charter Council shall rest with the National Government Cabinet, with input from the BEE Advisory Council.*
40. *The functions of the Charter Council may include the following:*
- a) to supply guidance on sector-specific matters affecting BEE to the entities within the sector,*
 - b) to compile reports on the status of Broad-Based BEE within the sector, and*
 - c) to share information with the national monitoring mechanism and approved accreditation agencies, which can have specific relevance to BEE in the sector.*
41. *The Charter Council **may not** perform the following:*
- a) Adjust or revise the following in the charter:*
 - i. indicators used for the different elements of Broad-based BEE,*

- ii. targets for the different indicators of the elements of Broad-based BEE, or
- iii. weightings for the different elements of Broad-based BEE.
- b) Override the decisions and interpretations of the dti or the BEE Advisory Council if the sector has material differences in its interpretation of the principles of broad-based BEE.

Annual Reporting of the Charter Councils to the dti and the BEE Advisory Council

42. The Charter Councils are required to report the progress made by the enterprises that are subject to the relevant charter, to the dti and the BEE Advisory Council. The reports shall outline the following:

- a) baseline indicators for all the different elements of broad-based BEE,
- b) aggregate scores of all the indicators of the BEE Scorecard for all the enterprises falling within the ambit of the charter,
- c) types of initiatives that are undertaken by the enterprises within the sector,
- d) Other relevant information that would be useful in assessing the state of Broad-based BEE within the sector.

The publication of sector transformation charters in the Gazette

43. According to section 12 of the Act, the Minister of Trade and Industry must publish the transformation charter for a particular economic sector in the Gazette, for general information and promote it only if he/she is satisfied that the charter:

- a) has been developed by major stakeholders in that sector; and
- b) advances the objectives of the Broad-based BEE Act.

44. In addition, the Minister can elect to publish a transformation charter for a particular sector of economy as a Code of Good Practice in the Gazette, if he/she is satisfied that the charter meets the criteria as stipulated in section 12 of the Act, as well as all principles and requirements in this and other statements of the Codes of Good Practice. Upon its publication as a Code of Good Practice in the Gazette, the charter will assume the same status as a Code of Good Practice as stipulated in section 9 of the Act.

45. The publication of a sector transformation charter as a sector transformation charter, as defined in section 12 of the Act, in the Gazette, will confirm the draft document's status as a sector transformation charter and should be noted as evidence of the commitment by all stakeholders to promote black economic empowerment in the sector.

46. The effect of publication of a sector transformation charter as a Code of Good Practice, as defined in section 9 of the Act, in the Gazette is as follows:

- a) Enterprises subject to a charter published as a Code of Good Practice in the Gazette, shall be assessed using the BEE scorecard, weightings and targets contained in the sector transformation charter. Should there be any conflicts of principle, however, the principles contained in the broad-based BEE Act, Codes of Good Practice and the strategy document shall override the principles contained in the charter.
- b) The Charter's BEE Scorecard shall be the measurement criterion used by organs of state and public entities for determining the Broad-based BEE contribution.
- c) Notwithstanding the publishing of the charter as a Code of Good Practice in the Gazette, Government and other organs of state can elect to apply the generic scorecard as presented in statement 000, instead of the charter scorecard in extenuating circumstances.

47. If the charter is not published in the Gazette as a Code of Good Practice, the general measurement criteria contained in the Codes of Good Practice shall be used by an organ of state or a public entity when measuring the BEE status of the enterprises in that sector.

Enterprise Charters and Black Economic Empowerment Plans

48. All entities are encouraged to develop their own enterprise charters or economic empowerment plans as part of their commitment to black economic empowerment.

- a) An enterprise charter represents a detailed plan by the enterprise to achieve the objectives of the Act, the Strategy and the Codes of Good Practice.

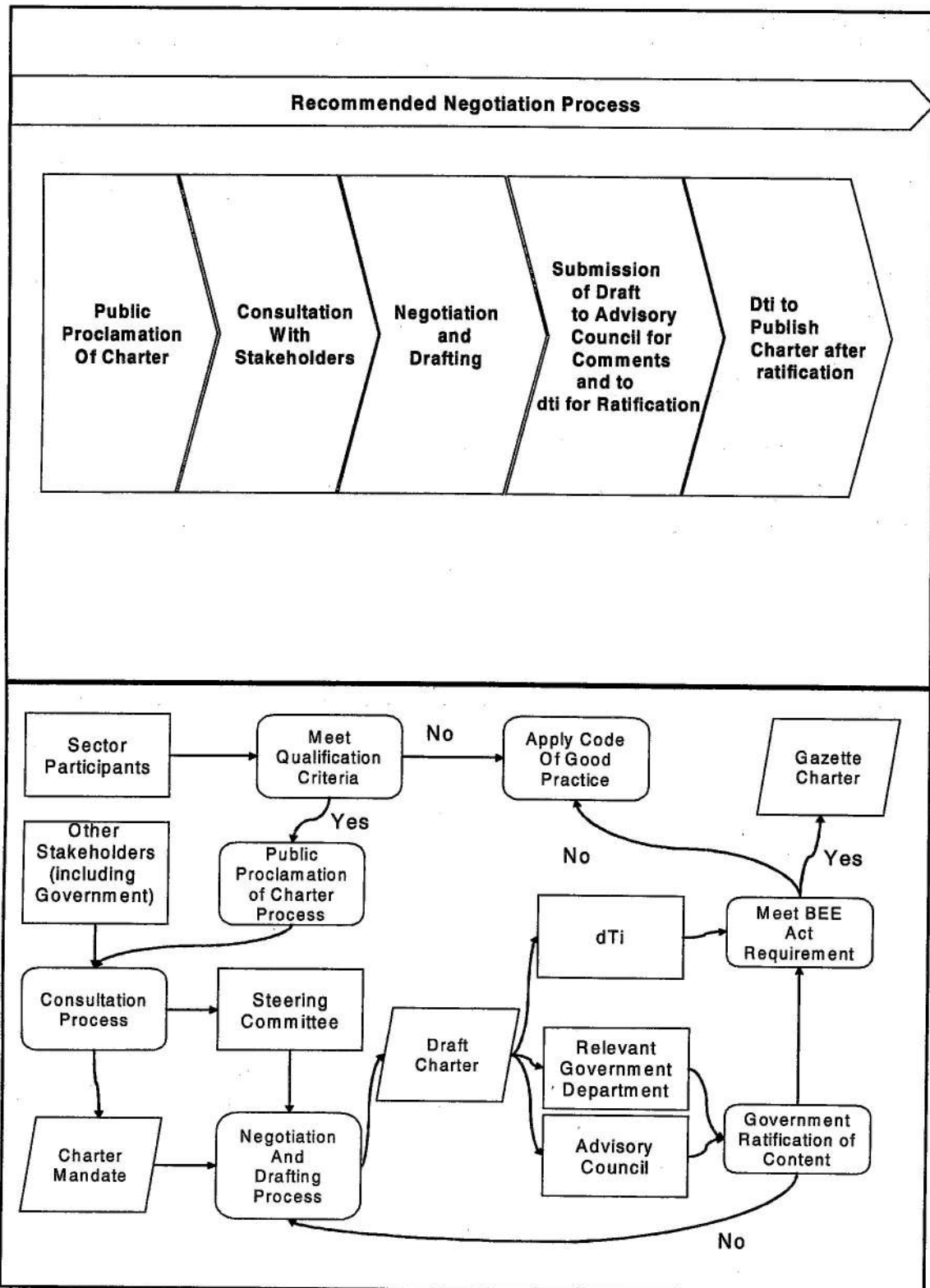
- b) *Enterprise charters will serve as evidence of the voluntary commitment of an enterprise towards black economic empowerment, and will not be gazetted as a Code of Good Practice.*
- c) *An enterprise charter must adopt the generic scorecard as presented by the Code of Good Practice, or the scorecard of a relevant sector transformation charter published as a Code of Good Practice in the Gazette.*

APPENDIX 1: The CHARTER PROCESS

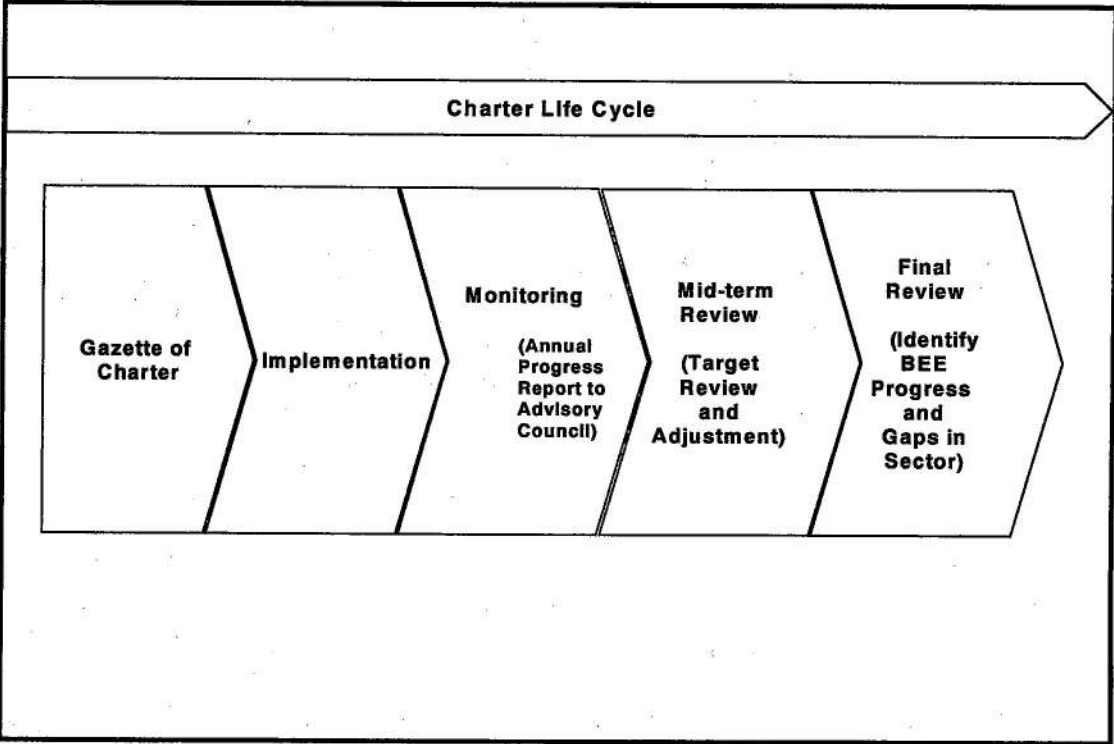
The following diagram illustrates the suggested process to be followed when formulating a charter. It is essential that all stakeholders are informed and consulted during the public proclamation, stakeholder consultation and drafting phases.

In order to ensure that the charters are harmonised and achieve the objectives of the BEE Act, a sector transformation charter will need to be submitted to the dti, and the BEE Advisory Council.

Once the content of the charter has been ratified by government, and the minister is satisfied that the requirements of s.12 of the Broad-based BEE Act are met, the dti will gazette the charter as a Code of Good Practice applicable to the specific sector.



APPENDIX 2: CHARTER LIFE CYCLE:



CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**STATEMENT 020:
BEE ADVISORY COUNCIL****Abstract**

This statement outlines the composition of the BEE Advisory Council (Council). The membership qualifications criteria, selection process and disqualification criteria are also outlined. The function and powers of the Council are described as well as the administrative function of the Council.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

December 2004

BEE ADVISORY COUNCIL**CONTENTS***Paragraphs*

INTRODUCTION.....	
<i>Background to BEE Advisory Council.....</i>	<i>01</i>
<i>Purpose of the Codes Good Practice.....</i>	<i>02</i>
OBJECTIVES OF STATEMENT.....	03
DEFINITIONS.....	04
COMPOSITION OF THE COUNCIL.....	05
MEMBERSHIP OF THE COUNCIL.....	06-09
QUALIFICATION FOR MEMBERSHIP OF THE COUNCIL	10
APPOINTMENT PROCEDURE FOR MEMBERS OF COUNCIL	11 - 13
TERMINATION OF MEMBERSHIP.....	14 - 16
REMOVAL FROM OFFICE.....	17
FUNCTIONS OF THE COUNCIL.....	18 - 19
MEETINGS.....	20 - 21
<i>Quorum and decisions.....</i>	<i>22 - 23</i>
<i>Rules of procedure.....</i>	<i>24</i>
<i>Conflicts of interest.....</i>	<i>25</i>
ADMINISTRATION AND FINANCES.....	26 - 28
REPORTING.....	29

Introduction

Background to the Black Economic Empowerment Advisory Council

1. The Black Economic Empowerment Advisory Council (Council) is established as a key mechanism of providing guidance and overall monitoring on the state of BEE in the entire economy.

Purpose of the Codes of Practice

2. The purpose of the Codes of Practice is to assist both the public and private sectors in their implementation of the objectives of the Broad-based Black Economic Empowerment (Broad-Based BEE) Act. The Codes of Good Practice provide principles and guidelines that would be used to accelerate broad-based BEE in a meaningful and sustainable manner. This Statement is aimed at highlighting the role and functions of the Council.

Objective of this Statement

3. The objectives of this Statement are to:
 - a) outline the Council membership qualification criteria, selection process and disqualification criteria,
 - b) delineate the powers and duties of the Council, and
 - c) outline the administration of the Council.

Definitions

4. The following terms are used in this Statement with the meanings specified below:
 - the Act:** The Broad-Based Black Economic Empowerment Act 2003, (Act no.53 of 2003).
 - Council:** the Black Economic Council Advisory Council established by section 4 of the Act.
 - Minister:** The Minister of Trade and Industry.

Composition of the Council

5. The Council consists of the following members, as outlined in the Act:
- a) the President, who is the chairperson of the Council,
 - b) the Minister, with the Minister's Director General as an alternate,
 - c) three other Cabinet Ministers appointed by the President, with their respective Director-Generals as their alternates,
 - d) no fewer than 10 and no more than 15 other members appointed by the President.

Membership of the Council

6. The President and Cabinet Ministers on the Council are members by virtue of their respective public offices and will cease to be members if they no longer hold that office, for any reason.
7. The following key criteria will be applied by the President when appointing members of the Council, as outlined in the Act (section 6(2)):
- a) the candidate should have appropriate expertise, and/or
 - b) represent different relevant constituencies including trade unions, business, community-based organisations and academics.
8. The President will appoint members of Council as envisaged by section 6(1)(d) of the Act and will keep their post for a period of three years.
9. A Council member appointed in terms of paragraph 13, will be eligible for re-appointment when his/her term of office expires.

Qualification for membership of the Council

10. A person may not be appointed or continue as a member of the Council if that person
- a) is an un-rehabilitated insolvent;
 - b) has at any time been removed from an office of trust on account of misconduct;
 - c) is, in any other respect, not fit to be a member.

Procedure for the appointment of certain members of Council

11. Whenever it is necessary to appoint a member of the Council envisaged in section 6(1)(d) of the Act, the secretariat of the Council shall:

- a) invite nominations for appointment as such a member,
- b) compile a list of the names of all persons nominated, setting out the particulars of each individual nominee, and
- c) submit the list to the President.

12. Any nomination made in terms of paragraph 11 must be supported by:

- a) the personal details of the nominee,
- b) details of the nominee's qualifications and experience,
- c) a motivation as to why the nominee should be appointed to the Council, and
- d) a signed statement by the nominee that he/she qualifies to be a member as set out in paragraphs 7 - 10 and is willing to be considered for appointment as a Council member.

13. The President must decide how many members to appoint in terms of section 6(1)(d) of the Act, and must make these appointments from the list submitted in terms of paragraph 11. If the list is inadequate, the President may appoint any suitable person of his choosing.

Termination of membership

14. Council members, who are also cabinet members, are appointed for as long as they remain cabinet members or until the President decides to appoint a different cabinet minister in their place.

15. A member of the Council appointed in terms of section 6(1)(d) of the Act, ceases to be a member when that person:

- a) resigns,
- b) is no longer eligible to be a member in terms of paragraph 10, or
- c) is removed from office in terms of paragraph 17.

16. A member who resigns must give at least one month's written notice to the President, although the President may accept a shorter period in a specific case.

Removal from office

17. The President may remove from the Council, a member appointed in terms of section 6(1)(d) of the Act if:

- a) the member is absent from two consecutive meetings of the Council without the prior permission of the Council or the President, except on good cause shown, or*
- b) the President, after consulting with the Council, is of the view that the person is no longer a fit to be a member of the Council.*

Functions of the Council

18. The functions of the Council, as set out in section 5 of the Act are to:

- a) advise government on BEE,*
- b) review progress in achieving BEE,*
- c) advise on draft Codes of Good Practice which the Minister intends publishing for comment in terms of section 9(5) of the Act,*
- d) advise on the development, amendment or replacement of the strategy referred to in section 11 of the Act,*
- e) if requested to do so, advise on draft transformation charters, and*
- f) facilitate partnerships between organs of state and the private sector that will advance the objectives of this Act.*

19. The Council has all the powers necessary to enable it to fulfill its functions as set out in section 5 of the Act, including the power to:

- a) conduct research or commission research to be conducted,*
- b) request information from organs of state or private bodies,*
- c) publish reports on BEE,*
- d) establish sub-committees to deal with specific matters as and when required,*

- e) *co-opt experts to serve on, or advise, sub-committees, and*
- f) *oversee the functions of the different sector Charter Councils, established through the sector transformation charters.*

Meetings

20. *The Council must meet at least once a quarter.*

21. *The Chairperson of the Council decides when and where the Council will meet, but a majority of the Council may request, in writing, that the Chairperson convene a meeting at the time and place set out in the request.*

Quorums and decisions

22. *A majority of the members of the Council and the Chairperson or his/her representative shall constitute a quorum for a meeting of the Council.*

23. *The Council will endeavour to reach consensus in its decision-making. Where this is not possible, a decision of the Council will be made by a majority of members present and voting at a meeting. If there is an equality of votes, the Chairperson of the meeting will have a casting vote in addition to that person's vote as a member.*

Rules of procedure

24. *The Council may determine its own procedures subject to the Act, the Constitution and sound corporate governance principles.*

Conflict of interests

25. *If a Council member has a personal or financial interest in any matter being discussed by the Council, the member must disclose that interest and withdraw from the Council when that matter is discussed.*

Administration and finances

26. The Department of Trade and Industry, after consultation with the Council, must draw up a budget for the Council.
27. There will be a Council secretariat made up of members of staff of the Department of Trade and Industry.
28. The secretariat is accountable to the Minister of Trade and Industry and must –
- a) keep full and proper records of all income and expenditure of the Council;
 - b) prepare financial statements reflecting the income and expenditure of the Council and submit these to the Council within three months of the end of the financial year;
 - c) keep accurate minutes of all Council meetings and circulate these to Council members;
 - d) make all the necessary logistical arrangements for Council meetings and
 - e) carry out any other task assigned to the secretariat by the Minister of Trade and Industry, after consultation with the Council.

Reporting

29. The Council must submit an annual report to Parliament. The report must, at least, specify the following:
- a) The state of broad-based BEE in the economy using the broad-based BEE scorecard;
 - b) The enablers and obstacles to the effective implementation of broad-based BEE and
 - c) Any other issues that have an impact on broad-based BEE.

CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**STATEMENT 030:
QUALIFICATION, MEASUREMENT AND REPORTING CRITERIA FOR BROAD-
BASED BLACK ECONOMIC EMPOWERMENT****Abstract**

This statement aims to align the application of policy instruments with broad-based BEE. The statement identifies the various policy instruments identified for the implementation of BEE, defines broad-based BEE mechanisms and differentiates them from narrow-based BEE instruments. The main objective of the statement is to provide a basis for government, industries and enterprises to align different preferential procurement, licensing and financing initiatives with broad-based BEE.

The statement also highlights the potential risk presented by the inclination of industry and enterprises to measure themselves on broad-based BEE but to evaluate their suppliers and business partners using narrow-based BEE criteria. An example of broad-based preferential procurement and reporting mechanisms is also provided. The statement also provides transitional recommendations for organs of state or enterprises currently applying narrow-based BEE mechanisms.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

*December 2004***QUALIFICATION , MEASUREMENT AND REPORTING CRITERIA FOR BROAD
BASED BLACK ECONOMIC EMPOWERMENT****CONTENTS**

	<i>Paragraphs</i>
INTRODUCTION	01-07
OBJECTIVES	08-09
INTERPRETATION AND DEFINITIONS	10-20
SCOPE	21-22
BALANCED SCORECARD	23-24
POLICY INSTRUMENTS FOR IMPLEMENTING BEE	25-27
APPLICATION OF BROAD-BASED BEE	28-34
HARMONISATION OF RECOGNITION	35 - 36
MEASUREMENT AND REPORTING MECHANISMS.	37
EXAMPLE A	

Introduction

1. *This statement aims to standardise and systematise the use of different policy instruments, as identified in the broad-based BEE Strategy, in applying and implementing broad-based BEE. The policy instruments identified by the BEE Strategy include: **legislation, regulation, issuing of licenses, granting of concessions, disposal of state assets, entering into private/public partnership and contracting for goods and services (i.e. preferential procurement).***

The statement also advises private sector charters and initiatives, which involve the application of broad-based BEE, especially through preferential procurement.

2. *When implemented properly and appropriately, the broad-based BEE strategy will ensure that every enterprise operating in South Africa will become both an implementer and a facilitator of economic transformation. The promotion and acceleration of broad-based BEE can be enhanced by the multiplier effect introduced by the different indirect BEE factors, namely preferential procurement and enterprise development.*
3. *The inclusion of narrow-based BEE mechanisms in the application of the broad-based BEE strategy will, however, result in a significant implementation gap. The gap will limit the effects of the BEE strategy to the first or second tier of business which deals directly with Government through procurement, licensing or other policy instruments.*
4. *Ineffective implementation of BEE will significantly reduce the multiplier effect envisaged in the broad-based strategy. Furthermore, the application of a narrow-based strategy encourages fronting, especially in sectors where genuine black ownership is difficult to achieve in the immediate short term.*
5. *Various charters and enterprise initiatives have, unfortunately, demonstrated the inclination towards the application of narrow-based mechanisms, largely as a result of the fact that the adoption and implementation of narrow-based BEE requires*

significantly less time and effort than the adoption and implementation of broad-based BEE.

- 6. Furthermore, the application of different approaches when implementing policy instruments, hinders the harmonisation of the reporting and disclosure of BEE initiatives by public and private sector entities. This results in the unnecessary complication of a process which would otherwise be able to compare BEE contributions across Government institutions, industries and entities.*
- 7. The lack of harmonisation also results in potential resistance to BEE, as businesses are uncertain of the correct and appropriate initiatives to implement in their promotion of broad-based BEE.*

Objectives

- 8. The objective of this statement is to examine and explain the methods and requirements for the implementation of broad-based BEE when applying policy instruments.*
- 9. Highlighting the potential social and economic consequences of the current implementation gap, the statement aims to steer public and private enterprise away from the ease of narrow-based measures, in order to further accelerate broad-based BEE through the design, implementation and reporting of broad-based BEE initiatives.*

Interpretation and Definitions

- 10. The terms defined below are intended to provide a reference for a variety of defined or understood terms and concepts that are used in relation to various forms of Enterprises including, but not limited to:*
 - a) companies governed in terms of the Companies Act 61 of 1973,*
 - b) close corporations governed in terms of the Close Corporations Act 69 of 1984,*

- c) *co-operative societies governed in terms of the Co-Operatives Act 91 of 1981,*
- d) *partnerships and sole proprietorships governed in terms of the common law, and*
- e) *trading trusts as governed in terms of the Trust Property Control Act 57 of 1998 and the common law.*

In each such instance, a term defined herein may be accompanied by a reference to some of the analogous terms or concepts used in relation to the various forms of Enterprises. Where such analogous terms and concepts are identified, they may be used in the interpretation of the defined term, but should under no circumstances be considered to limit the generality of the defined term which they accompany, nor should they be deemed to constitute an exhaustive list of analogous terms and concepts of that defined term.

11. *Examples provided in this statement are inserted for illustrative purposes only and should not be considered substantive provisions within this statement.*

12. **Act:** *The Broad Based Black Economic Empowerment Act 53 of 2004.*

13. **BEE Scorecard:** *a scorecard for the measurement of broad-based black economic empowerment for a particular Enterprise, as set forth in terms of a Code of Good Practice issued under the Act.*

14. **Black people:** *is as defined in Statement 040: Glossary to the Code of Good Practice*

15. **Black economic empowerment (BEE):** *an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about both significant increases in the number of black people that manage, own and control the country's economy as well as significant decreases in income inequalities.*

16. **Broad-based black economic empowerment:** *is as defined in Statement 040: Glossary to the Codes of Good Practice. The process promotes the economic*

empowerment of all black people, including black women, black workers, black youth, black people with disabilities and black people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:

- increasing the number of black people who manage, own and control enterprises and productive assets,
- facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,
- human resource and skills development,
- achieving equitable representation in all occupational categories and levels in the workforce,
- preferential procurement, and
- investment in enterprises that are owned or managed by black people.

17. Broad-based BEE status: the BEE progress or status of an economic entity as measured according to the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. The different preferential categories include:

- (a) **"Excellent contributor to broad-based BEE"** - total score of 80% and above
- (b) **"Good contributor to broad-based BEE"** - total score of 65% to 79.9%
- (c) **"Satisfactory contributor to broad-based BEE"** - total score of 40% to 64.9%
- (d) **"Limited contributor to broad-based BEE"** - total score of below 40%

18. Fronting: any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries would suggest. The claims can be in the form of direct ownership, human resource development and indirect ownership components as per the balanced scorecard.

19. Narrow-based BEE: a set of transactions transferring corporate assets from white to black ownership.

20. Narrow-based BEE status: the categorisation of companies and economic entities by their ownership and management status. These include but are not limited to:

- (a) **"Black enterprise"** defined as an enterprise or economic entity that is 50,1% owned by black persons and where black management has majority control. Ownership is a term that bears the same meaning as defined in Statement 100 of the Code of Good Practice.
- (b) **"Black empowered enterprise"** is one that is at least 25,1% owned by black persons and where there is substantial management control by black people.
- (c) **"Black influenced enterprise"** is one that is at least 5,1% owned by black persons and where there is tangible influence by black people.
- (d) **"Black engendered enterprise"** is one with at least 25,1% representation of black women within the black equity and management portion.
- (e) **"Community or broad-based enterprise"** has an empowerment shareholder who represents a broad base of members.

Scope

21. This statement should be applied in the recognition and measurement of black ownership by every organ of state and public entity in –

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law,
- (b) developing and implementing a preferential procurement policy,
- (c) determining qualification criteria for the sale of state-owned enterprises, and
- (d) developing criteria for entering into partnerships with the private sector.

22. In addition, the statement should be applied to ensure a uniform approach to the black ownership aspect of broad-based BEE by all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.

Balanced Scorecard

23. In terms of the broad-based BEE Strategy, government will use a 'balanced scorecard' to measure progress made by enterprises and sectors in achieving BEE.

The scorecard will measure three core elements of BEE:

- a) Direct empowerment through ownership and control of enterprises and assets,
- b) Human resource development and employment equity, and
- c) Indirect empowerment through preferential procurement and enterprise development.

24. The balanced scorecard also allows government departments, state-owned enterprises, other public agencies and private sector companies to align their own procurement practices and individual BEE strategies. The scorecard facilitates the process of setting measurable targets for BEE.

Policy Instruments for the Implementation of Broad-based BEE

25. In terms of the broad-based BEE strategy, government will apply BEE criteria, as set out in the scorecard, when:

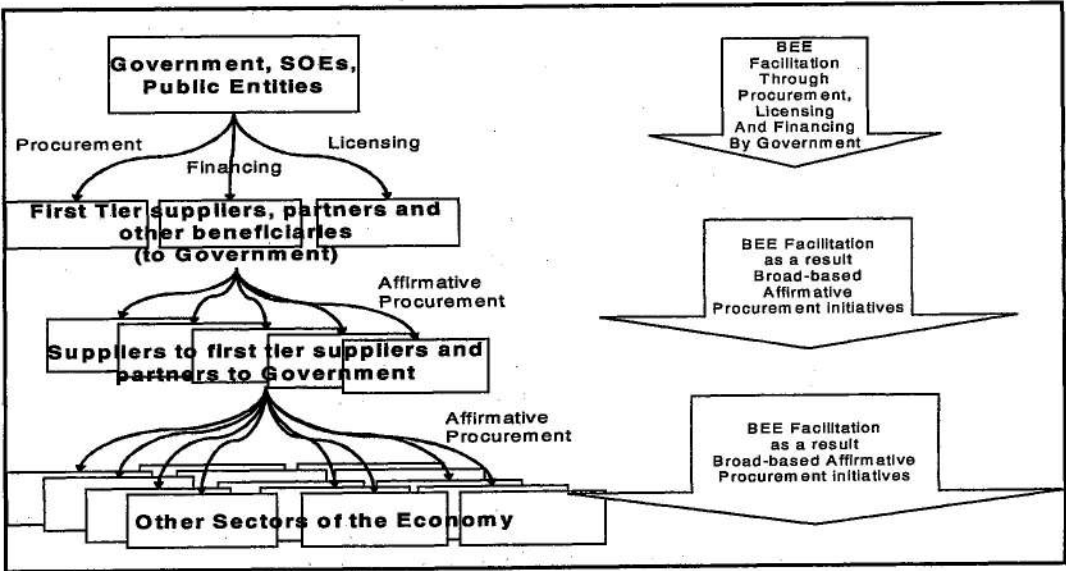
- a) contracting for goods and/or services,
- b) granting a license to engage in a specific regulated economic activity, for example, gambling or mining,
- c) granting a concession to a private enterprise to operate an asset or enterprise on behalf of the state,
- d) selling an asset or a state-owned enterprise,
- e) entering into a public-private partnership, and
- f) engaging in any economic activity.

26. Preferential procurement mechanisms include the procurement of goods and services from various categories of BEE contributors. The key differentiation between preferential procurement and normal procurement practices is the consideration of the broad-based BEE status of an enterprise as a preferential indicator in the identification, selection and retention of suppliers.

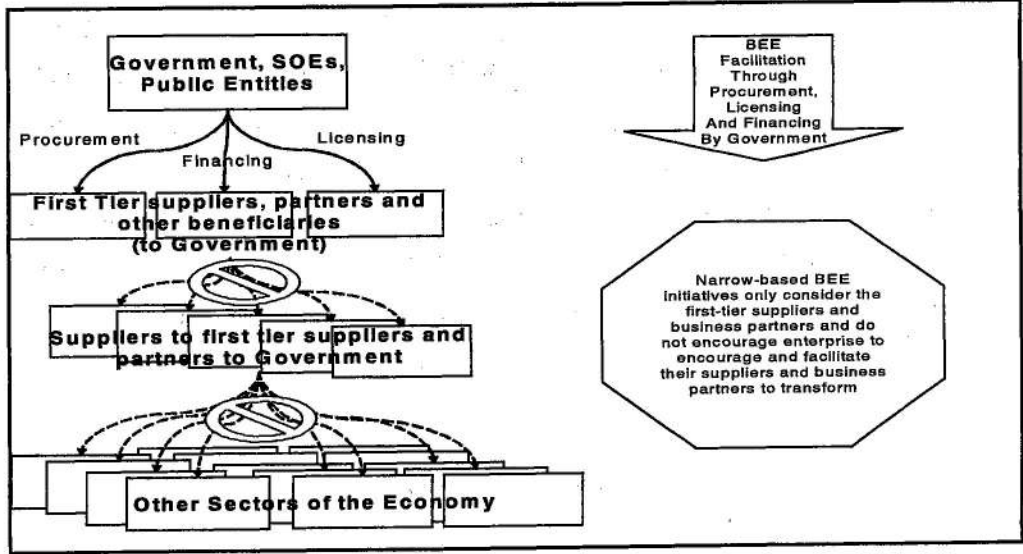
27. Broad-based BEE criteria should also be applied when government and private sector apply BEE-based preference mechanisms when using financing instruments to promote BEE. Financing instruments will be varied and will include guarantees, grants, incentive schemes, loan and equity financing.

Application of Broad-based BEE through Policy Instruments

28. Government will use the total score as per the balanced scorecard to rank enterprises according to their progress in achieving broad-based BEE. The following are the categories for preference in ranking:
- a) Total score of 80% and above – excellent contributor to broad-based BEE
 - b) Total score of 65% to 79.9% – good contributor to broad-based BEE
 - c) Total score of 40% to 64.9% – satisfactory contributor to broad-based BEE
 - d) Total score of below 40% – limited contributor to broad-based BEE
29. Government will also encourage the private sector to develop similar ranking systems in sector and enterprise charters and to use these rankings in their procurement.
30. Government, industry and enterprises should use the broad-based BEE status of an enterprise when developing preferential procurement and reporting mechanisms. The transitional provision (paragraph 37) applies to enterprises and organs of state that have existing narrow-based BEE mechanisms for preferential procurement and reporting purposes.
31. The application of broad-based BEE initiatives accelerates the transformation process in the economy, because every economic enterprise becomes a facilitator and driver of broad-based BEE, to their suppliers and business partners.



32. The consideration of the narrow-based status of an enterprise when applying broad-based BEE can potentially result in the dilution of the overall reach and effectiveness of the broad-based BEE process. Narrow-based BEE only evaluates ownership and control within an enterprise and does not require enterprises to undertake initiatives to promote BEE within their industries or through their suppliers and business partners.



33. While broad-based BEE mechanisms aim to broaden the beneficiary base to include all black investors, management, employees, suppliers and communities, narrow-

based BEE mechanisms limit their beneficiary base to those who have the necessary opportunity, experience and resources to acquire an equity stake or be appointed into senior managerial positions.

34. Furthermore, narrow-based BEE mechanisms may result in the prevalence of 'fronting' to circumvent the ownership and management requirements of BEE.

Harmonisation of Recognition, Measurement and Reporting Mechanisms for Broad-based BEE

35. The differences in the election of broad-based BEE and narrow-based BEE mechanisms by different industries, severely hampers the harmonisation of recognition, measurement and reporting of BEE across government and industry.

36. Another prevalent mismatch is illustrated by the proposals of some industry charters, where enterprises measure themselves in terms of a broad-based BEE scorecard, while setting narrow-based, ownership requirements for their suppliers and business partners. This can result in implementation gaps and conflicts when different charters are implemented.

Transitional Provisions

37. It is envisaged that all BEE policy instruments applied 12 months after the release of this Code will be based on a broad-based mechanism. BEE status will be measured as a score based on the BEE scorecard, rather than solely on the percentage of ownership held by black people. No reporting in terms of a narrow-based mechanism will qualify for any percentage score in terms of any broad-based BEE scorecard, subsequent to the 12-month transitional period after the release of this Code.

Example A: Proposed preferential procurement indicators and reporting structures for industry charters and enterprise initiatives

Procurement from Categories of BEE Suppliers	Comparative Weighting	Actual Spend	Weighted Spend
<i>Excellent Contributors to BEE</i>	100%	R 75,000,000	R 75,000,000
<i>Good Contributors to BEE</i>	75%	R 240,000,000	R 180,000,000
<i>Satisfactory Contributors to BEE</i>	50%	R 374,500,000	R 187,250,000
<i>Limited Contributors to BEE</i>	0%	R 152,000,000	R 0
Total Preferential procurement Status		R 841,500,000	R 442,250,000
Preferential procurement Percentage			52.6%

The comparative weighting, actual spend and weighted spend are included for illustrative purposes, whilst the actual comparative weighting and reporting mechanisms are presented in the Procurement statements of the Codes of Good Practice and in the different industry charters.

STATEMENT 040:**GLOSSARY****Abstract**

This statement provides a glossary for the terms and definitions used in the Codes of Good Practice.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

Introduction

01. *This statement provides a glossary of all relevant black economic empowerment terms and definitions applicable to the Codes of Good Practice.*

Glossary

02. **"The Act"** refers to the Broad-Based Black Economic Empowerment Act 2003, (Act no.53 of 2003).

03. **"Accredited BEE Rating Agencies"** are enterprises that have been accredited by SANAS on behalf of the dti, who meet the minimum technical and black economic empowerment criteria for rating agencies. The main role of the BEE rating agencies is to provide an independent opinion on the broad-based black economic empowerment status of enterprises. An accredited BEE rating agency must have the capacity to evaluate, verify and confirm the BEE status of enterprises using the broad-based BEE scorecard as presented in Statement 000. An accredited BEE rating agency cannot issue an opinion on an enterprise with which it has a conflict of interest.

04. **"BEE Scorecard"** a scorecard for the measurement of broad-based black economic empowerment for a particular Enterprise as set forth in terms of statement 000 of the Code of Good Practice issued under the Act.

05. **"Beneficially Owned or Beneficially Interested"** in relation to a share or like instrument, shall include, without limitation, the right to receive dividends and capital distributions in respect of, and exercise the votes attached to, that share or like instrument.

06. **"Black Economic Empowerment (BEE)"** is as defined in the Strategy for Broad-Based Black Economic Empowerment. It is defined as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people

that manage, own and control the country's economy, as well as significant decreases in income inequalities.

07. **"Black people"** is as defined in the Broad-based Black Economic Empowerment Act no. 53 of 2003, save that it is limited to South African citizens. In terms of the implementation of the Codes of Good Practice, the term is further defined as Africans, Coloureds and Indians who are South African citizens. For avoidance of doubt, this term does not include juristic persons or any form of Enterprise other than a sole proprietor. With regard to this definition, **"black women"** means black people who are women and **"black designated groups"** means black people who are also workers, youth, people with disabilities or people living in rural areas.
08. **"Broad-Based BEE Status"** is measured as per the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. It is referred to as the BEE progress or status of an economic entity, and the different preferential categories include:
- a) **Excellent contributor to broad-based BEE** - total score of 80% and above
 - b) **Good contributor to broad-based BEE** - total score of 65% to 79.9%
 - c) **Satisfactory contributor to broad-based BEE** - total score of 40% to 64.9%
 - d) **Limited contributor to broad-based BEE** - total score of below 40%
10. **"Broad-based Black Economic Empowerment (Broad-Based BEE)"** is defined in the Broad-based Black Economic Empowerment Act no.53 of 2003. The Act defines it as the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:
- a) increasing the number of black people that manage, own and control enterprises and productive assets,
 - b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,
 - c) human resource and skills development,
 - d) achieving equitable representation in all occupational categories and levels in the workforce,

- e) *preferential procurement and*
- f) *investment in enterprises that are owned or managed by black people.*

11. **"Broad-based Benefit Scheme"** means a scheme whereby a trust; a company, as constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association representing a broad base of beneficiaries (such as a community or a broad-based group of natural persons including, without limitation, women, workers and/or employees, youth, the disabled and people living in rural areas); participates in the equity of an enterprise on behalf of targeted beneficiaries for their benefit (whether direct or indirect). This definition shall not include a trust or a voluntary association where same is used for purely commercial reasons unrelated to community or broad-based benefit. For the avoidance of doubt, any employee share scheme or similar scheme which is constituted using a trust; a company constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association; is deemed to be a broad-based benefit scheme.

12. **"The Codes of Good Practice"** refer to the Codes of Good Practice as contemplated by section 9 of the Act.

13. **"Council"** means the Black Economic Advisory Council established by section 4 of the Act.

14. **"Defined Benefit Funds"** is defined in the Pensions Fund Act no. 24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise is obliged to provide the agreed benefits to current and former employees.

15. **"Defined Contribution Funds"** is defined in the Pensions Fund Act no.24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise and an employee pay fixed contributions into a separate entity or a fund and have no legal or constructive obligation to pay further contributions if the

fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current or prior periods.

16. **"dti"** Department of Trade and Industry

17. **"Economic interest"** means a member's entitlement to receive any payment from an enterprise which arises by virtue of the member's holding an equity interest. Any entitlement of a member to receive any payment consequent to the winding up of an enterprise is expressly included within the definition of economic interest. A member's entitlement to any payment arising on any other basis shall not be deemed to be economic interest unless such entitlement is without a commercial rationale or is intended to circumvent the objectives of the Act. Terms and concepts analogous to economic interest include, but are not limited to:

- a) a shareholder's entitlement to dividends of a company limited by shareholding or a co-operative society,
- b) a partner's entitlement to share in the distributions of a partnership, and
- c) a beneficiary's entitlement to share in the distributions of a trading trust.

18. **"Enterprise"** the person(s) conducting a business, trade or profession in the Republic of South Africa which is recognised in terms of the laws of the Republic of South Africa, whether or not such an enterprise is incorporated.

19. **"Equity interest"** in relation to a member, means that portion of the equity which the individual members of an enterprise have as claims against the enterprise or against the other members of that enterprise, as the case may be, expressed as a percentage of the total equity in that enterprise. Analogous terms and concepts include, but are not limited to:

- a) shares in a company, or similar instruments conferring a right in respect of a company,
- b) limited by shareholding or in a co-operative society,

- c) *members' interests in a close corporation,*
- d) *a partnership interest in a partnership, and*
- e) *a beneficiary share in a trading trust*

20. **"Equity"** in relation to any form of enterprise, means the capital invested in that enterprise in respect of which the members have a claim against the enterprise or against the other members of that enterprise. Equity does not include any amounts advanced by a member to an enterprise on loan, provided that, in certain circumstances referenced below, the settlement of a loan may be deemed an economic interest, in which case, and for that limited purpose, equity may include such a loan. Analogous terms and concepts include, but are not limited to:

- a) *issued share capital in a company limited by shareholding or in a co-operative society,*
- b) *the total of members' interests in a close corporation,*
- c) *the total interest of all of the partners in a partnership, and*
- d) *the total capital value of a trading trust or of a sole proprietorship.*

21. **"Fair Market Value"** shall mean a valuation of an equity interest in an enterprise, determined by a suitably qualified person using the methodology set out in statement AC133 of the Generally Accepted Accounting Practice applicable in the Republic of South Africa, as amended or substituted from time to time.

22. **"Flow Through Principle"** refers to the principle applied when determining the entitlement of Black people, Black women and Black designated groups to exercise Voting Rights in or to share in Economic Interest of an Enterprise, regard is had solely to Voting Rights and/or Economic Interest to which Black people, Black women and Black designated groups (as the case may be) who are natural persons are entitled. To the extent that an entitlement to Voting Rights and/or Economic Interest is held by juristic persons, regard will be had to Voting Rights and/or Economic Interest to which Black

people, Black women and Black designated groups (as the case may be) who are natural persons are entitled in that juristic person. The same principle will apply throughout the chain of ownership by juristic persons until such time as that chain terminates in the entitlement of a natural person who is a Black person, Black women and Black designated groups (as the case may be) to such Voting Rights and/or Economic Interest.

23. **"Fronting"** is defined as any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries. The claims can be in the form of direct ownership, human resource development and indirect ownership components as per the balanced scorecard.

24. **"Governing Body"** a conceptual body whose representatives' main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of the enterprise.

25. **"Indirect Ownership Scheme"** in this statement, means any scheme whereby (a) person(s) own(s) an equity interest in an enterprise on behalf of third party beneficiaries and where there is no direct and participative exercise of voting rights by such third party beneficiaries. An indirect ownership scheme includes, without limitation, a broad-based benefit scheme as well as post-employment benefit plans, insurance funds, mutual funds, private equity funds and similar lawful collective investment schemes.

26. **"Limited contributor to broad-based BEE"** is measured as per the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. It is measured as a total score of below 40%.

27. **"Member"** (in relation to any form of enterprise), is defined as a person having an equity interest in the equity of that enterprise. Analogous terms and concepts include, but are not limited to:

- a) a shareholder of a company limited by shareholding or in a co-operative society,
- b) a member of a close corporation,
- c) a partner in a partnership,
- d) a beneficiary in a trading trust, and
- e) the sole proprietor in a sole proprietorship.

28. **"Minister"** is as defined in the Broad Based Black Economic Empowerment Act no.53 of 2003, as the Minister of Trade and Industry.

29. **"Narrow-based BEE status (categories of BEE enterprises)"** refers to the categorisation of companies and economic entities by their ownership and management status. These include but are not limited to:

- a) **"black enterprise"** defined in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, as a company or economic entity that is 50,1% owned by black persons and where there is substantial management control by black people. Ownership refers to economic interest, whilst management refers to the membership of any board or similar governing body of the enterprise.
- b) **"black empowered enterprise"** is, in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, defined as one that is at least 25,1% owned by black persons and where there is substantial management control by black people.
- c) **"black engendered enterprise" (black women owned enterprise)** is one with at least 25,1% representation by black women within the black equity and management portion.
- d) **"community or broad-based enterprise"**, in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, has an empowerment shareholder who represents a broad base of members.

30. **"Organ of state"** is defined in the Broad Based Black Economic Empowerment Act no. 53 of 2003. The Act refers to the definition in the Public Finance Management Act no. 1 of 1999 (PFMA). It is defined as a national or provincial department; a municipality as contemplated in the Constitution; Parliament; a provincial legislature; constitutional institutions listed in Schedule 1 of the PFMA, as well as the major and other public entities listed in Schedule 2 and 3 of the PFMA.

31. **"Ownership Targets"** means the targeted percentages of the total economic interests and voting rights to which members who are black people are entitled, as calculated in terms of statement 100. In terms of Statement 100 issued as a Code of Good Practice under the Act, the ownership target for BEE scorecards completed in compliance with that statement is 25% in respect of economic interest and 25% plus one vote, in respect of voting rights. Other Codes of Good Practice may specify different ownership targets for their own purposes.

32. **"Rights Limitation"** in this statement means a pledge of equity interest by a member pursuant to the acquisition by that member of that equity interest as well as any other legal and/or commercial mechanism implemented in relation to an acquisition of an equity interest to which voting rights and/or economic interests attach, and which is designed to:

- a) reserve to any other person other than the member, the benefits of that equity interest or of the voting right and/or economic interest attached to that equity interest for whatsoever purpose, whether generally or specifically, or for a fixed period, or until, or upon, the occurrence of some event; or
- b) withhold, defer or restrict, in any manner, the exercise of a voting right and/or receipt of economic interest by a member for whatsoever purpose, whether generally or specifically, or for a fixed period, or until or upon the occurrence of some event.

For the avoidance of doubt, a common "put" or "call" option granted by members to other members of the same enterprise, will not constitute a rights limitation unless the exercise price of the "call" or "put" option is less than fair market value.

33. **"The Strategy"** refers to the *Broad-based Black Economic Empowerment Strategy* published by the Department of Trade and Industry under section 11 of the Act.

34. **"Superannuation Scheme"** means a "provident fund", a "pension fund" and a "retirement annuity fund" as defined in Schedule 2 of Income Tax Act 58 of 1962.

35. **"Unrestricted"** The term "Unrestricted" used in relation to Voting Rights or Economic Interest means that such Voting Rights and/or Economic Interest (as the case may be) are not subject to a Restriction. For the avoidance of doubt, any lawful arrangement whereby a Member agrees, in writing, to a limitation upon their right to alienate any portion of the Equity Interest owned by them for a fixed period of time shall not constitute a Restriction.

36. **"Voting Right"** (in relation to a member) is the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as a percentage of the votes to which that member is entitled, over the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:

- a) the percentage of votes held by a shareholder of a company or a co-operative,
- b) society at a meeting of the shareholders,
- c) the percentage of votes held by a member of a close corporation at a meeting of the members, and
- d) the percentage of votes held by a partner at a partnership meeting.

37. **Weighting:** the percentage of a BEE scorecard allocated to the measurement of a particular element of Broad-based BEE such as ownership, management, employment equity, etc

CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**STATEMENT 050:
ACCREDITATION OF BEE RATING AGENCIES****Abstract**

This statement outlines the criteria to be used in accrediting BEE rating agencies. The structural, human resources, information and process requirements for BEE rating agencies are explained. The function and responsibilities of rating agencies are outlined. The role played by SANAS in the accreditation of BEE rating agencies is described.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

December 2004

REQUIREMENTS OF BEE RATING AGENCIES**CONTENTS**

	<i>Sections</i>
<i>Introduction</i>	<i>1</i>
<i>Objectives</i>	<i>2</i>
<i>Definitions</i>	<i>3</i>
<i>The Role of BEE Rating Agencies</i>	<i>4</i>
<i>The accreditation role of SANAS on behalf of the dti</i>	<i>5</i>
<i>Principles</i>	<i>6</i>
<i>General requirements</i>	<i>7</i>
<i>Structural Requirements</i>	<i>8</i>
<i>Human resource requirements</i>	<i>9</i>
<i>Information requirements</i>	<i>10</i>
<i>Process requirements</i>	<i>11</i>
<i>Responsibilities</i>	<i>12</i>

1. INTRODUCTION

1.1 Black Economic Empowerment (BEE) rating agencies can accelerate the achievements of the South African economy in its drive towards sustainable Broad-Based BEE.

2. OBJECTIVES

2.1 This Statement aims to clarify the roles of BEE rating agencies, and specify the criteria by which they will be accredited by SANAS on behalf of the Department of Trade and Industry (**the dti**).

2.2 This Statement is to be used by SANAS to accredit BEE rating agencies, as well as by the rating agencies when auditing the BEE Status of entities

3. DEFINITIONS

For the purpose of this Statement the following terms have the following meanings assigned to them.

3.1 **Evaluation** means assess, verify and validate the BEE status of entities.

3.2 **Accredited BEE Rating Agency**: is defined in Statement 040: Glossary to the Code of Good Practice

3.3 **the dti**:

The Department of Trade and Industry

3.4 **SANAS**

South African National Accreditation System

3.5 **Consultancy**: The provision of BEE related services to management of entities these services include participating in any activity to aid an enterprise to implement its BEE strategy. Examples of consultancy include but are not limited to the following:

- a) Coaching or facilitating the BEE process on behalf of an enterprise towards the development and implementation of activities leading to BEE compliance;

b) *Preparing or producing manuals or procedures*

Arranging training and participating as a trainer is not considered consultancy, provided that, where training relates to the BEE process, it must be confined to providing generic information and advice that is freely available in the public domain, i.e. the trainer should not provide enterprise-specific solutions.

Giving guidelines to entities as to what they need to comply with is not considered consultancy.

4. *THE ROLE OF BEE RATING AGENCIES*

4.1 *Assess, verify and validate BEE information for decision-making*

BEE rating agencies should assess, verify and validate both disclosed and undisclosed BEE related information of entities. The verification thereof should be based on the principles contained in the broad based BEE Codes of Good Practice, as well as the relevant gazetted industry charters.

4.2 *Evaluate BEE transactions and scenarios*

*BEE rating agencies shall evaluate the BEE transactions/scenarios to determine the effective creation and/or enhancement of economic wealth to black people. The evaluation shall be based on all the components of broad based BEE and shall ensure that the transactions/scenarios reflect the aims of these components in the empowerment of black people. This may include giving indicative ratings based on scenarios presented by an enterprise. The BEE rating agencies also have a responsibility to identify and report to **the dti** any material deviations from the reported and the actual BEE benefits in a transaction.*

5. THE ACCREDITATION ROLE OF SANAS ON BEHALF OF the dti

- 5.1** *SANAS, as the national accreditation body, operates in compliance with the requirements for accreditation bodies as defined in the International standard ISO/IEC Guide 61. BEE Rating Agencies are required to apply to SANAS for accreditation and rating. SANAS on behalf of the dti will accredit and rate BEE Rating Agencies in terms of the accreditation criteria set out in this Statement for Rating Agencies.*
- 5.2** *As from the effective date of this Statement, BEE Rating Agencies will have a 90 days grace period, after which they may only perform BEE ratings if such an agency has been accredited in line with the dti requirements in this regard.*
- 5.3** *All previous ratings conducted by the accredited BEE Rating Agencies prior to the accreditation must be updated within 6 months of the effective date of this Statement to reflect all principles and methodologies encapsulated in this Statement.*
- 5.4** *After the grace period, all previous rating conducted by non-accredited BEE Rating Agencies will not be acceptable as an opinion on BEE status of entities.*

6. PRINCIPLES

6.1 General

6.1.1 *Principles outlined in this Statement are fundamental and are not prescriptive requirements. This Statement does not give specific requirements for all situations that can occur, however these principles should be applied as guidance for the decisions that may need to be made for unanticipated situations.*

6.1.2 *The overall aim of rating is to give confidence to all parties that rely upon the rating. The value of rating is public trust achieved through gaining the confidence of all these parties, which includes but are not limited to:*

- a) *The BEE Rated Entities that are the clients of the BEE Rating Agencies;*
- b) *The customers of the BEE Rated Entities;*
- c) *Governmental authorities;*
- d) *Non-governmental entities;*
- e) *Consumers and other members of the public.*

6.1.3 Principles for inspiring confidence include:

a) Impartiality

Impartiality is the actual and perceived presence of objectivity. Objectivity means that conflicts of interest do not exist or are resolved so as not to adversely influence subsequent activities of the BEE Rating Agency. Synonyms that are useful in conveying the element of impartiality are: objectivity, independence, freedom from conflict of interests, freedom from bias, lack of prejudice, neutrality, fairness, open-mindedness, even-handedness, detachment and balance.

Being impartial, and being perceived to be impartial, is necessary for a BEE Rating Agency to deliver a rating that provides confidence. It is recognised that the source of revenue for a BEE Rating Agency is the client paying for its service and that this is a potential threat to impartiality. In order to obtain and maintain confidence, a BEE Rating Agency has to be able to demonstrate that its decisions are based on objective evidence and that its decisions are not improperly influenced by other interests or by other parties.

Threats to impartiality include:

- *Self-interest threats - threats that arise from person or enterprise acting in their own interest, for example financial self-interest.*
- *Self-review threats - threats that arise from a person or enterprise reviewing the work done by themselves. For example; evaluating the BEE compliance of a client to whom the BEE Rating Agency provided consultancy*
- *Familiarity (or trust) threats - threats that arise from a person or body being too familiar or trusting of another person instead of seeking evaluation evidence to base the rating conclusion on*

- *Intimidation threats - threats that arise from a person or enterprise having a perception of being coerced openly or secretly, such as a threat to be replaced or reported to a supervisor.*

b) Competence

Competence is the demonstrated ability to effectively apply knowledge and skills. The competence of the personnel supported by the infrastructure of the agency is necessary for the BEE Rating Agency to deliver a rating that provides confidence.

c) Responsibility

The client enterprise, not the BEE Rating Agency has the responsibility for conformity with the requirements for BEE Rating. The BEE Rating Agency has the responsibility to carry out a factual, thorough evaluation of an enterprise's BEE status, and based on the result to grant a BEE rating.

d) Openness

Openness is access to or disclosure of information. A BEE Rating Agency needs to provide public access to, or disclosure of, appropriate and timely information about the evaluation and rating process and about the rating status of any enterprise in order to gain confidence in the integrity and credibility of the BEE rating.

A BEE Rating Agency needs to provide appropriate access or disclose to specific interested parties non-confidential and non-proprietary information about the results of specific evaluations (e.g. evaluations in response to complaints), in order to gain and maintain confidence.

e) Confidentiality

In order to gain access to the privileged information that is needed for the BEE Rating Agency to adequately assess the requirements for BEE rating, a BEE Rating Agency needs to keep any proprietary information about an enterprise confidential. A BEE Rating Agency may disclose an enterprise's actual rating result, without compromising the confidentiality of the information supporting the rating outcome.

f) Resolution of complaints

Parties that rely on ratings made by accredited BEE Rating Agencies expect to have complaints investigated, and if these are found to be valid, they need to have confidence that the complaints will be appropriately addressed and that a reasonable effort will be made to resolve the complaint (Refer also to section 11.7). An appropriate balance between the principles of openness and confidentiality, including resolution of complaints, is necessary in order to demonstrate integrity and credibility.

7. GENERAL REQUIREMENTS

7.1 General

7.1.1 *A BEE Rating Agency should internally display a positive and utmost commitment to all seven indicators of the Broad Based BEE Strategy scorecard as set out by the dti, and shall demonstrate the highest level of contribution towards these key indicators (i.e. 65%).*

These indicators include:

- *Black ownership*
- *Black management & control*
- *Employment equity*
- *Skills development*
- *Affirmative procurement*
- *Enterprise development*
- *Residual factor*

7.1.2 *BEE Rating Agencies should be seen as being both factually and perceptually independent from their rated entities, and should avoid any circumstances that rise or may potentially give rise to a conflict of interest between the various parties. Should such circumstance arise, the full nature thereof must immediately be disclosed to all parties involved and prior consent must be given before any further evaluation activities is undertaken.*

7.2 Legal and contractual matters

7.2.1 Legal responsibility

The BEE Rating Agency shall be a legal enterprise, or a defined part of a legal enterprise, such that it can be held legally responsible for all its activities

7.2.2 Ownership

BEE Rating Agencies should not hold a substantial equity share or any of the voting rights of a client to be rated which might enable it to significantly influence any of the decisions making processes within the enterprise. When evaluating the type of financial interest, consideration should be given to the fact that financial interest range from those where the individual has no control over the investment vehicle to those where the individual has control over the financial interest or is able to influence investment decisions. The provisions of this statement do not exclude the holding of a minority interest or listed share where the total shareholding does not constitute a substantial shareholding if compared to the total amount of shares issued by the enterprise. The materiality of such financial interest needs to be evaluated to ensure that the independence of the BEE Rating Agency is not impaired. Disclosure of material financial interest in the rated enterprise needs to be disclosed to the dti in accordance with sound corporate governance principles.

7.2.3 Investment through other equity and/or debt instrument

BEE Rating Agencies should not be a party to a debt-creating agreement between itself and client to be rated, where such an agreement factually encumbers or is perceived to encumber the agency in the execution of its professional discretion and objectivity towards the BEE assessment for the client. The provision of this statement does not necessarily preclude the BEE Rating Agency from entering into such agreements where it is the normal business of the client to provide such services and it is entered into under conditions not more favourable than those provided to the general public at large.

7.2.4 Rating Agreement

The BEE Rating Agency shall have a legally enforceable agreement for the provision of services to its rated entities.

7.2.5 Responsibility for BEE rating decisions

The BEE Rating Agency shall retain authority and shall be responsible for its decisions relating to the BEE rating

7.3 Management of impartiality

7.3.1 *The BEE Rating Agency shall have and demonstrate commitment to impartiality in the BEE rating activities especially through its top management structures. The BEE Rating Agency shall have a publicly available statement that it understands the importance of impartiality when managing conflict of interest and that it ensures objectivity when carrying out its activities.*

7.3.2 *The BEE Rating Agency and any part of the same legal enterprise should not offer or provide BEE consultancy. However, where a group provides both, a solid divide (separate legal companies under a holding group) must be in place so that there is no actual or perceived link between the two subsidiary companies, which would cause a conflict of interest. Measures taken to ensure impartiality should be well documented.*

7.3.3 *The BEE Rating Agency shall identify, analyse and document the possibilities for conflict of interest arising from providing its services including any conflicts arising from its relationships. Having relationships does not necessarily present a BEE Rating Agency with a conflict of interest. However, if any relationship creates a risk to impartiality, the BEE Rating Agency shall document how it eliminates or minimises such risk.*

7.3.4 *The BEE Rating Agency shall ensure that activities of other bodies do not affect the confidentiality, objectivity and impartiality of its activities. The BEE Rating Agency shall avoid any situation that would create a conflict of interests arising from the activity of any other body.*

7.3.5 *The BEE Rating Agency shall not provide a BEE rating on an enterprise that has received BEE consultancy from that Rating Agency, where the relationship between the consultancy body and the BEE Rating Agency poses an unacceptable threat to the impartiality of the BEE Rating Agency.*

Allowing a minimum period of two years to elapse following the end of the BEE consultancy is one way of reducing the threat to impartiality to an acceptable level.

A relationship that threatens impartiality between the BEE Rating Agency and BEE consultancy body may be based on ownership, governance, management, personnel, shared resources, finances, contacts, marketing, and payment of a sales commission or other inducement for the referral of new rated entities, etc.

7.3.6 *BEE consultancy and BEE rating shall not be marketed together. The BEE Rating Agency shall take adequate measures to prevent a consultancy body from stating or implying that BEE rating would be simpler, faster or less expensive if a specified BEE Rating Agency is used. Similarly, a BEE Rating Agency shall not state or imply that BEE rating would be simpler, faster or less expensive if a specified consultancy body is used. The BEE Rating Agency activities shall not be marketed as linked with the activities of a body that provides BEE consultancy.*

7.3.7 *All BEE Rating Agency personnel, either internal or external, or committees, which could influence the rating activities, shall act impartially and shall not allow commercial, financial or other pressures to compromise impartiality.*

7.3.8 *To ensure that there is no conflict of interests, personnel who have provided BEE consultancy including those acting in a managerial capacity, shall not be employed to take part in a rating evaluation or the rating process if they have been involved in BEE consultancy for the enterprise in question, within the last two years.*

7.3.9 *BEE Rating Agencies shall require personnel, internal and external, to declare any situation known to them that may present them or the BEE Rating Agency with a conflict of interest. BEE Rating Agencies shall use this information as input to identifying threats to impartiality raised by the activities of such personnel or by the organisations that employ them and shall not use such personnel, internal or external, unless they can demonstrate that there is no conflict of interests.*

The fact that the evaluators' employer is known to have provided BEE consultancy within the last two years, for the enterprise under evaluation, is likely to be considered as a high threat to impartiality.

If a member of the rating team, or their immediate family member, has a direct financial interest, or a material indirect financial interest, in the rating client, the self-interest threat created would be so significant the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

- a) Dispose of the direct financial interest prior to the individual becoming a member of the rating team;*
- b) Dispose of the indirect financial interest in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the rating team; or*
- c) Remove the member of the rating team from the rating engagement.*

7.4 Liability and financing

7.4.1 *The BEE Rating Agency shall evaluate the significant risks arising from its rating activities and demonstrate that it has arrangements (e.g. insurance or reserves) to cover liabilities arising from its operations in each of the geographic areas in which it operates.*

7.4.2 *The BEE Rating Agency shall evaluate its finances and sources of income and shall be able to demonstrate that commercial, financial or other pressures do not compromise its impartiality.*

8. STRUCTURAL REQUIREMENTS

8.1 Structure and top management of BEE Rating Agencies

8.1.1 *The Organisational structure of the BEE Rating Agency shall be such as to give confidence in its activities.*

8.1.2 *The BEE Rating Agency shall identify the top management (board or equivalent governing body of persons) having overall authority and responsibility for each of the following, where relevant:*

- a) Development of policies relating to the operation of the agency;*
- b) Supervision of the implementation of the policies and procedures;*
- c) Supervision of the finances of the body;*
- d) Performance of evaluations and ratings;*
- e) Decisions on BEE ratings;*
- f) Delegation of authority to committees or individuals, as required, to undertake defined activities on its behalf;*
- g) Providing adequate, qualified resources for its activities*

8.1.3 *The BEE Rating Agency shall document the organisational structure, showing duties, responsibilities and authorities of management and other rating personnel and any committees.*

(When the BEE Rating Agency is a defined part of a legal enterprise, the structure shall include the line of authority and the relationship to other parts within the same legal enterprise.)

8.1.4 *The BEE Rating Agency shall have formal rules for the appointment, terms of reference and operations of any committees that are involved in the rating activities.*

8.2 Safeguarding impartiality

The composition, terms of reference, duties, authorities and responsibilities of any committee involved in the rating process, shall be formally documented and authorised by the top management of the BEE Rating Agency to ensure:

- a) Representation of a balance of interests such that no single interest predominates;*

- b) Access to all the information necessary to enable it to fulfil its functions;*

9. HUMAN RESOURCE REQUIREMENTS

9.1 Competence of management and personnel

9.1.1 The BEE Rating Agency shall have processes to ensure that appropriate personnel have up-to-date knowledge relevant to BEE criteria. It shall determine the competence required (including experience and the level of training). Where applicable, it shall determine any other qualification requirements for demonstrating competence prior to authorisation to carry out specific functions.

9.1.2 In determining the competence requirements for their personnel performing the different activities involved in BEE rating the BEE Rating Agency shall address the functions undertaken by management and administrative personnel in addition to those directly performing evaluations and rating functions.

9.1.3 The BEE Rating Agency shall have access to the necessary expertise for advice on matters directly relating to BEE rating. Such advice may be provided externally or by BEE Rating Agency personnel.

9.2 Personnel involved in the rating process

9.2.1 The BEE Rating Agency shall, irrespective of the use made of external or temporary resources have as part of its own enterprise, personnel having sufficient competence for managing the BEE rating.

9.2.2 The BEE Rating Agency shall employ or have access to a sufficient number of rating evaluators, including team leaders.

9.2.3 The BEE Rating Agency shall make clear to each person concerned his or her duties, responsibilities and authorities.

9.2.4 The BEE Rating Agency shall have defined processes for selecting, training, formally authorising and monitoring evaluators and experts used in the rating process. The initial competence evaluation of an evaluator shall include observing an on-site rating undertaken by the person being evaluated.

9.2.5 The BEE Rating Agency shall have a process for ensuring that the assessors it uses (including team leaders) are competent for evaluating specific areas of the elements of the Broad Based Black Economic Empowerment scorecard..

9.2.6 The BEE Rating Agency shall ensure that assessors and, where needed, experts, are familiar with rating processes, BEE rating requirements, methodology and other relevant requirements. The BEE Rating Agency shall give evaluators and experts access to an up-to-date set of documented procedures giving evaluation instructions and all relevant information on rating operations.

9.2.7 The BEE Rating Agency shall use assessors and experts only for those activities where they have demonstrated competence.

9.2.8 The BEE Rating Agency shall identify training needs and shall offer or provide access to specific training to make its Evaluators and experts knowledgeable in the BEE rating requirements and processes.

9.2.9 The group or individual which taking the decision on BEE rating shall have knowledge and experience sufficient to evaluate the BEE evaluation processes and related recommendations of the Evaluation team.

9.2.10 The BEE Rating Agency shall ensure the satisfactory performance of personnel involved in the evaluation and BEE rating process. There shall be documented procedures and criteria for monitoring the performance of all persons involved based on the frequency of their usage and the level of risk linked to their activities. In particular, the BEE Rating Agency shall review the competence of its personnel in the light of their performance in order to identify training needs.

9.2.11 *The BEE Rating Agency shall have appropriate documented requirements for monitoring the performance of its Evaluators and experts. These requirements shall include a combination of on-site observation, review of evaluation reports and feedback from rated entities or from the market. This monitoring shall be designed in such a way as to minimise the disturbance of the normal processes of rating especially from the client's viewpoint.*

9.2.12 *The BEE Rating Agency shall periodically observe the performance of each evaluator and expert on-site. The frequency of on-site observations shall be based on need determined from all monitoring information available.*

9.3 Use of individual external Evaluators and external experts

The BEE Rating Agency shall require external evaluators and external experts to have a written agreement by which they commit themselves to comply with applicable policies and procedures as defined by the BEE Rating Agency. The agreement shall address aspects relating to confidentiality and to independence from commercial and other interests, and require the external evaluators and external experts to notify the BEE Rating Agency of any existing or prior association with any enterprise they may be assigned to evaluation.

9.4 Personnel records

The BEE Rating Agency shall maintain records of relevant qualifications, training experience and competence of each person involved in the rating process. In addition, for external evaluators and external experts, the BEE Rating Agency shall maintain up-to-date records of affiliations and professional status.

9.5 Outsourcing

9.5.1 *The BEE Rating Agency shall have a process in which it describes the conditions under which outsourcing may take place. The BEE Rating Agency shall have a legally enforceable agreement covering the arrangements, including confidentiality and conflict of interests, with each outsourced body.*

9.5.2 *Decision-making regarding BEE ratings shall never be outsourced.*

9.5.3 *The BEE Rating Agency shall:*

- a) Take full responsibility for all evaluations outsourced to another body;*
- b) Maintain its responsibility for granting a BEE rating;*
- c) Ensure that the outsourced body uses individuals that conform to the applicable provisions of this Statement, including competence, impartiality and confidentiality and BEE status;*
- d) Ensure that the outsourced body uses individuals that are not involved, either directly or through any other employer, with an enterprise to be evaluated, in such a way that impartiality could be compromised; and*
- e) Obtain the consent of the enterprise being evaluated to use a given outsourced body.*

9.5.4 *The BEE Rating Agency shall have documented procedures for the qualification, monitoring and records of all outsourced bodies used for evaluations.*

10. INFORMATION REQUIREMENTS

10.1 Disclosable Information

10.1.1 *The BEE Rating Agency shall maintain and provide, upon request, information about its activities to SANAS*

10.1.2 *Information the BEE Rating Agency provides to any rated enterprise or to the marketplace, including advertising, shall be accurate and not misleading.*

10.1.3 *The BEE Rating Agency shall make publicly accessible information about BEE ratings granted.*

10.1.4 *On request from SANAS, and or the rated enterprise, the BEE Rating Agency shall provide means to confirm the validity of a given rating.*

10.1.5 The BEE rating agencies shall provide to SANAS upon completion of each rating the BEE balanced scorecard of the enterprise rated. (This information will not be made publicly available, it will be used by the dti for monitoring and analysis purposes)

10.2 BEE rating certificates

10.2.1 The BEE Rating Agency shall provide by any means it chooses a BEE rating certificate to the client.

10.2.2 The effective date on a rating certificate shall not be before the date of the rating decision.

10.2.3 The rating certificate shall identify:

- a) The name and identifiable physical location(s) of each site of the client enterprise that is BEE rated;
- b) The dates of granting BEE rating and validity;
- c) The expiry date of the rating certificate;
- d) A unique identification number;
- e) The standard and/or normative document including issue and/or revision used to evaluate the client;
- f) The name and/or mark/logo of the BEE Rating Agency.
- g) The scorecard against which the enterprise is being rated.
- h) BEE Rating

BEE rating certificates should show a banded total score in line with the ranges of BEE scores. For example the ranges of scores may be as follows (as contained in Statement 040) :

- Total score of 80% and above – excellent contributor to broad-based BEE
- Total score of 65% to 79.9% – good contributor to broad-based BEE
- Total score of 40% to 64.9% – satisfactory contributor to broad-based BEE
- Total score of 25% to 40% - limited contributor to broad-based BEE

- *Total score of below 25% – unsatisfactory contributor to broad-based BEE*

The ranges are essential to avoid drawn-out disputes over percentage points between different rated entities.

10.3. Directory of rated entities

The BEE Rating Agency shall maintain and make available to the dti a current directory of valid rating certificates which as a minimum shall show the details outlined in paragraph 10.2.3

10.4 Reference to rating and use of marks

10.4.1 *A BEE Rating Agency shall have a policy governing any mark that it authorises rated entities to use. This shall assure, among other things, traceability back to the BEE Rating Agency.*

10.4.2 *The BEE Rating Agency shall require that the rated enterprise:*

- a) Conforms to the requirements of the BEE Rating Agency when making reference to its rating in communication media such as the internet, documents, brochures or advertising;*
- b) Does not make or permit any misleading statement regarding its BEE rating/status;*
- c) Does not use or permit the use of a BEE certificate or any part thereof in a misleading manner;*
- d) Does not use its rating/status in such a manner that would bring the BEE Rating Agency into disrepute and lose public trust.*

10.4.3 *The BEE Rating Agency shall exercise proper control of ownership and take suitable action to identify and deal with incorrect references to BEE rated status.*

10.5 Confidentiality

10.5.1 *The BEE Rating Agency shall, through legally enforceable commitments, have a policy and arrangements to safeguard the confidentiality of the information obtained or created during the performance of rating activities at all levels of its structure including committees and external bodies or individuals acting on its behalf.*

10.5.2 *The BEE Rating Agency shall inform the rated enterprise, in advance, of the information it intends to place in the public domain. All other information, except for information that is made publicly available by the client, will be considered proprietary information and regarded as confidential.*

10.5.3 *Except as required in this Statement, information about a particular client or individual shall not be disclosed to a third party without the written consent of the client/individual concerned. Where the BEE Rating Agency is required by law to release confidential information to a third party, the rated enterprise or individual concerned shall, unless prohibited by law, be notified in advance of the information provided.*

10.5.4 *Information about the rated enterprise from sources other than the rated enterprise (e.g. complainant, regulators) shall be treated as confidential, consistent with the BEE Rating Agency's policy.*

10.5.5 *Personnel, including any committee members, contractors, personnel of external bodies or individuals acting on the BEE Rating Agency's behalf, shall keep confidential all information obtained or created during the performance of the rating activities.*

10.5.6 *The BEE Rating Agency shall have available and use equipment/facilities that ensure the secure handling of confidential information (e.g. documents; records).*

10.5.7 *When confidential information must be made available to other bodies (e.g. the dti, SANAS) the BEE Rating Agency shall inform its rated enterprise of this action.*

10.6 Information exchange between a BEE Rating Agency and its clients

10.6.1 Information on the rating process and requirements

The BEE Rating Agency shall provide and update the following information to clients:

- a) A detailed description of the initial and continuing rating process, including the request for rating, initial evaluations and surveillance evaluations;*
- b) Information about the fees for request for rating, initial rating evaluation and continuing rating;*
- c) The BEE Rating Agency requirements on the prospective client:*
 - To conform with rating requirements;*
 - To make all necessary arrangements for the conduct of the rating evaluations, including provision for examining documentation and the access to all areas, records and personnel for the purposes of rating and resolution of complaints.*
- d) Documents describing the rights and duties of clients including requirements when making reference to its rated status in communication of any kind;*
- e) Summary of the process for granting BEE rated status;*
- f) Information on procedure for handling complaints and appeals.*

10.6.2 Notice of changes by a BEE Rating Agency

The BEE Rating Agency shall give its clients due notice of any changes to its requirements for rating. The BEE Rating Agency shall verify that each client conforms to the new requirements.

10.6.3 Notice of changes by a client

The BEE Rating Agency shall have enforceable arrangements to ensure that the rated enterprise informs the BEE Rating Agency, without delay, of matters that may affect its rated status.

11. PROCESS REQUIREMENTS

The BEE rating agency shall demonstrate adequate expertise in the field of both BEE rating and the reporting thereof.

11.1 Rating methodology

11.1.1 *The BEE Rating Agency will verify; evaluate and validate to rate entities based on the principles encapsulated in the BEE Codes of Good Practice and must include all elements of the broad-based BEE scorecard.*

11.1.2 *The BEE Rating Agency must verify the information provided, in order to reach its opinion on the BEE status of an enterprise. Simple telephonic enquiries do not constitute verification.*

11.2 General requirements applicable to rating evaluations

11.2.1 *The BEE Rating Agency shall have a process for selecting and appointing the rating team, including the rating team leader taking into account the competence needed to achieve the objectives of the rating.*

11.2.2 *The BEE Rating Agency shall have formal rules and/or contractual conditions to ensure that each team member acts in an impartial manner. Each team member shall inform the BEE Rating Agency prior to accepting assignment of the rating, about any known existing, former or envisaged link to the enterprise to be rated.*

11.2.3 *The BEE Rating Agency shall ensure that a rating plan is established for each rating to provide the basis for agreement regarding the conduct and scheduling of the rating activities.*

11.2.4 *The BEE Rating Agency shall determine, in accordance with documented procedures, the time needed to accomplish a complete and effective rating of the enterprise. The time determined by the BEE Rating Agency, and the justification for the determination, shall be recorded.*

11.2.5 *The determination of the rating programme and any subsequent adjustments shall consider the size of the enterprise, the scope and complexity of its structure, products and processes as well as demonstrated level of commitment to BEE and the results of any previous ratings.*

11.2.6 *Where multi-site sampling is utilised for the rating of a client covering the same activity in various locations, the BEE Rating Agency shall develop a sampling programme to ensure proper rating of the whole enterprise. The rationale for the sampling plan shall be documented for each client.*

11.2.8 *The tasks given to the rating team shall be clearly defined and made known to the client enterprise, and shall require the rating team:*

- a) To examine the structure, policies, processes, procedures and related documents (records) of the client enterprise relevant to the BEE requirements;*
- b) To determine that these contain sufficient evidence to support the BEE rating;*

11.2.9 *The BEE Rating Agency shall provide the name and make available background information of each member of the rating team, with sufficient time for the client enterprise to object to the appointment of any particular analyst or expert and the BEE Rating Agency to reconstitute the team in response to any valid objection.*

11.2.10 *The rating plan shall be communicated and the dates of the rating shall be agreed upon, in advance, with the client enterprise.*

11.2.11 *The BEE Rating Agency shall have a process for conducting on-site ratings.*

11.3 Initial rating

11.3.1 Request for a BEE rating

The BEE Rating Agency shall require an authorised representative of the enterprise requesting rating to provide the necessary information to enable it to establish:

- a) the general features of the enterprise, including its name, address(es) of its physical location(s);
- b) general information such as its activities, human and other resources, functions and relationships in a larger corporation, if any; and
- c) information concerning the enterprise's use of consultancy relating to the BEE .

11.3.2 Review of request for a BEE rating

11.3.2.1 Before proceeding with the rating, the BEE Rating Agency shall conduct a review of the request for rating to ensure that:

- a) the information is sufficient for the conduct of the review;
- b) the requirements for rating are clearly defined, documented and have been provided to the enterprise;
- c) any known difference in understanding between the BEE Rating Agency and the enterprise is resolved;
- d) the BEE Rating Agency has the competence and ability to perform the service. Location and number of the applicant enterprise's operations, time required to complete ratings and any other points influencing activities or the rating process shall be considered (language, safety conditions, threats to impartiality etc.) Based on this review, they shall determine the competences it needs to include in its rating team.
- e) records of the justification for the decision shall be maintained.

11.3.2.2 Where a BEE Rating Agency is taking account of rating or other evaluations already granted to the enterprise, it shall collect sufficient, verifiable information to justify and record any adjustments to the rating programme.

11.3.2.3 After having conducted the review of request for rating, the BEE Rating Agency shall notify the enterprise that it is accepting or not accepting the request for rating. The reasons of non-acceptance must be conveyed to the applicant (e.g. resource constraints).

11.3.2.4 *Before commencing the rating, an agreement shall be established between the BEE Rating Agency and the enterprise which:*

- a) requires the enterprise to supply any information needed for its intended rating;*
- b) requires the enterprise to conform to the requirements for BEE rating.*

11.3.2.5 *The rating team shall be appointed and composed of rating analysts (and any other experts as necessary) who, between them, have the totality of the competences identified by the BEE Rating Agency, for the rating of the enterprise. The selection of the team shall be performed with reference to the designations of competence of rating analysts and experts and may include use of both internal and external human resources.*

11.3.3 Initial rating

- a) Ratings shall have a rating plan.*
- b) The rating shall take place at the site(s) of the client enterprise. The purpose of the evaluation is to measure the enterprise's BEE progress or status.*
- c) The rating team shall conduct the evaluation to gather evidence to rate the enterprise in terms of BEE.*
- d) The rating team shall rate a sufficient number of examples of the activities of the enterprise in relation to the BEE criteria to get a sound appraisal of the enterprise's BEE status.*
- e) As part of the rating, the rating team shall address a sufficient number of the staff, including top management and operational personnel of the enterprise, to provide assurance that the information gathered is sound.*
- f) The rating team shall analyse all information and rating evidence gathered to determine the BEE status.*
- g) The BEE Rating Agency shall ensure that a detailed written rating report is promptly provided to the rated enterprise.*
- h) Ownership of the rating report shall be maintained by the BEE Rating Agency.*

11.3.4 Initial BEE rating decision

11.3.4.1 The information provided by the rating team to the BEE Rating Agency for the decision shall include as a minimum:

- a) the report indicated in 12.2.4;
- b) the recommended rating as assessed by the rating team

11.3.4.2 The individual or group that makes the decision shall include a level of knowledge and experience sufficient to evaluate the rating processes, results and recommendations of the rating team.

11.3.4.3 The BEE Rating Agency shall make the decision on the basis of an evaluation of the rating results and any other relevant information.

11.3.4.4 The BEE Rating Agency shall ensure that the person(s) or committees that participate in the decisions are different from those who carried out the rating.

11.3.4.5 The BEE Rating Agency shall confirm, prior to making a decision, that the information provided by the rating team is sufficient with respect to the BEE rating requirements.

11.4 Continual surveillance

11.4.1 Rating Evaluations

The BEE Rating Agency shall have an established programme for carrying out periodic on-site evaluations at sufficiently close intervals to confirm the continued validity of the enterprise's BEE rating.

11.4.2 On-going rating report

For on-going rating, the report from the rating team to the enterprise and to the BEE Rating Agency shall reflect that all the requirements of the BEE were reviewed.

11.4.3 Maintaining BEE status

The BEE Rating Agency shall maintain the rating based on demonstration that the enterprise continues to satisfy the BEE requirements. It may maintain an enterprise's

rating based on a positive recommendation by the rating team leader without further independent review.

11.5 Special evaluations

It may be necessary for the BEE Rating Agency to conduct evaluations of entities at short notice, in order to investigate complaints or in response to changes. In such cases:

- a) the BEE Rating Agency shall describe and make known in advance to the enterprise the conditions under which these short notice visits are to be conducted;*
- b) The BEE Rating Agency shall exercise additional care in the assignment of the rating team because of the lack of opportunity for the enterprise to object to the rating team members.*

11.6 Appeals

11.6.1 The BEE Rating Agency shall have a documented process to receive, evaluate and make decisions on appeals.

11.6.2 A description of the appeals handling process shall be publicly available.

11.6.3 The BEE Rating Agency shall be responsible for all decisions at all levels of the appeals handling process.

11.6.4 Investigation and decision on appeals shall not result in any discriminatory actions against the appellant.

11.6.5 The appeal handling process shall include at least the following elements and methods:

- a) an outline of the process for receiving, validating, investigating the appeal, and deciding what actions are to be taken in response to it;*
- b) tracking and recording appeals, including actions undertaken to resolve them;*

11.6.6 *The BEE Rating Agency shall acknowledge receipt of the appeal and provide the appellant with progress reports and the outcome.*

11.6.7 *The decisions to be communicated to the appellant shall be made by, or reviewed by, individual(s) not involved in the manner that is the subject of the appeal.*

11.6.8 *The BEE Rating Agency shall give formal notice of the end of the appeal handling process to the appellant.*

11.6.9 *All appeals should be resolved in a timely manner by the BEE rating agency. As a guide an appeal must be resolved within a maximum of 30 days of the initial lodging of the appeal.*

11.7 Complaints

11.7.1 *A user of a BEE rated enterprise's results, can expect to have complaints investigated, and if determined to be valid, have confidence that the complaints will be appropriately addressed and that a reasonable effort will be made to resolve the complaint in a timely manner.*

The effective resolution of complaints is an important means of protection for the BEE Rating Agency, its rated entities, and other users against errors, omissions or unreasonable behaviour. Confidence in rating activities is safeguarded when complaints are processed appropriately.

11.7.2 *A description of the complaints handling process shall be publicly available.*

11.7.3 *Upon receipt of a complaint the BEE Rating Agency shall confirm whether the complaint relates to BEE rating activities that it is responsible for, and if so shall deal with it.*

11.7.4 *Any complaint about a rated enterprise shall also be referred by the BEE Rating Agency to the rated enterprise in question.*

11.7.5 The BEE Rating Agency shall have documented process to receive, evaluate and make decisions on complaints. This process shall be subject to requirements for confidentiality, as it relates to the complainant and to the subject of the complaint.

11.7.6 The complaints handling process shall include at least the following elements and methods:

- a)** an outline of the process for receiving, validating, investigating the complaint, and deciding what actions are to be taken in response to it;
- b)** tracking and recording complaints, including actions undertaken to resolve them;
- c)** ensuring that any appropriate correction and corrective action is taken.

11.7.7 The BEE Rating Agency receiving the complaint shall be responsible for gathering and verifying all necessary information to validate the complaint.

11.7.8 Whenever possible, the BEE Rating Agency shall acknowledge receipt of the complaint, and provide the complainant with progress reports and the outcome.

11.7.9 The decisions to be communicated to the complainant shall be made by, or reviewed by, individual(s) not involved in the matter that is the subject of the complaint.

11.7.10 The BEE Rating Agency shall give formal notice of the end of the complaint handling process to the complainant.

11.8 Records on BEE rated clients

11.8.1 The BEE Rating Agency shall maintain records on the audit and rating process for all rated entities, including all entities that submitted requests for rating, and all entities rated.

11.8.2 Records on rated entities shall include:

- a)** request for rating information and initial and on-going ratings
- b)** justification for rating time determination

- c) records of complaints and appeals, and any subsequent correction or corrective actions;*
- d) deliberations and decisions, if applicable;*
- e) documentation of the decisions;*
- f) record of BEE certificates issued.*

11.8.3 *The BEE Rating Agency shall keep the records on rated entities to ensure that the information is kept confidential. When records are transported, transmitted or transferred, secured handling shall ensure that confidentiality is maintained.*

11.8.4 *The BEE Rating Agency shall have a document policy and documented procedures on retention of records.*

12. RESPONSIBILITIES OF BEE RATING AGENCIES

12.1 *In order to be accredited, it is the BEE Rating Agency's responsibility to comply with the requirements set out in this Statement.*

12.2 *No enterprise or person shall perform the task of black economic empowerment rating (as defined) without the proper accreditation from SANAS as is set out in this Statement.*

12.3 *The methodology followed by BEE rating agencies in the performance of black economic empowerment ratings should demonstrate a clear understanding of and knowledge on all Codes of Good Practice on BEE and should focus on all elements of the broad based black economic empowerment strategy.*

12.4 *In its accreditation of, the Department of Trade & Industry should endeavour to evaluate the BEE status of the agency under review in terms of all indicators of broad based BEE, as well as the technical expertise of the applying agencies.*

12.5 *SANAS shall inform the BEE Rating Agency of its accreditation status on the completion of the accreditation.*

12.6 *The BEE Rating Agency will submit to **the dti** an annual report of its BEE status and any other relevant information to demonstrate its technical expertise and free from conflict of interest on an annual basis.*

12.7 *SANAS will withdraw the accreditation of a BEE Rating Agency if the agency fails to comply with any technical or BEE criteria as set out in this Statement.*

STATEMENT 100:
**THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT**

Abstract

This statement deals with the role of equity ownership in broad-based economic empowerment and with the recognition and measurement criteria of the black ownership of enterprises. One of the objectives of the Broad-Based Black Economic Empowerment Bill is increasing the number of black people that manage, own and control enterprises and productive assets. The objective of this statement is to provide recognition and measurement criteria of the black ownership of enterprises.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory and other material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes, the Codes need only be applied to material matters

December 2004**THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT****CONTENTS**

	<i>Section</i>
INTRODUCTION.....	1
OBJECTIVE AND SCOPE	2
INTERPRETATION AND DEFINITIONS.....	3
OWNERSHIP SCORECARD.....	4
FLOW THROUGH PRINCIPLE.....	5
MEASUREMENT OF VOTING RIGHTS	6
MEASUREMENT OF ECONOMIC INTEREST	7
MEASUREMENT OF BONUS POINTS.....	8
SPECIAL PROVISIONS RELATING TO ORGANS OF STATE, PUBLIC ENTITIES AND SUPER – ANNUATION SCHEMES.....	9
NON CIRCUMVENTION.....	10
EXPLANATORY NOTES TO STATEMENT 100	

1 Introduction

- 1.1 *This statement deals with the role of equity ownership in broad-based black economic empowerment and with the recognition and measurement criteria for the ownership of enterprises by black people.*

2 Objective and Scope

- 2.1 *The objective of this statement is to provide recognition and measurement criteria of the black ownership of enterprises.*
- 2.2 *This statement should be applied in the recognition and measurement of black equity ownership by every organ of state and public enterprise in:*
- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law,*
 - (b) developing and implementing a preferential procurement policy,*
 - (c) determining qualification criteria for the sale of state-owned enterprises,*
and
 - (d) developing criteria for entering into partnerships with the private sector.*
- 2.2 *The statement should also be applied to ensure a uniform approach to the black equity ownership aspect of broad-based BEE by: all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.*

3 Interpretation and Definitions

- 3.1 *Certain terms defined below are intended to provide a reference to a variety of defined or understood terms and concepts that are used in relation to various forms of enterprises including, but not limited to, companies governed in terms of the Companies Act 61 of 1973, close corporations governed in terms of the Close Corporations Act 69 of 1984, and co-operative societies governed in terms of the Co-Operatives Act 91 of 1981, as well as partnerships and sole proprietorships governed in terms of the common law and trading trusts as governed in terms of the Trust Property Control Act 57 of 1998 and the common law. In each such instance, a term defined herein may be accompanied by a*

reference to some of the analogous terms or concepts used in relation to the various forms of enterprise. Where such analogous terms and concepts are identified, they may be used in the interpretation of the defined term, but should under no circumstances be considered to limit the generality of the defined term, which term they accompany, nor should they be deemed to constitute an exhaustive list of analogous terms and concepts to that defined term.

- 3.2 **"Act"** means the Broad Based Black Economic Empowerment Act 53 of 2003.
- 3.3 **"BEE Scorecard"** means a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set forth in terms of a Code of Good Practice issued under the Act and specifically includes, without limitation, any BEE scorecard provided for in terms of Statement 000, issued as a Code of Good Practice in terms of Section 9(1) of the Act.
- 3.4 **"Black people"** is a term that bears the same meaning as defined in the Act, save that it is limited to South Africans who are citizens by birth or who have obtained citizenship prior to 27 April 1994. This term does not include juristic persons or any form of enterprise other than a sole proprietor. With regard to this definition, **"black women"** means black people who are women and **"black designated groups"** means black people who are also workers, youth, people with disabilities or people living in rural areas.
- 3.5 **"Economic interest"** means a member's entitlement to receive any payment from an enterprise which arises by virtue of the member's holding an equity interest. Economic interest specifically includes any entitlement of a member to receive any payment consequent to the winding up of an enterprise. Economic interest excludes entitlement to receive payment pursuant to the member's status as an employee within the enterprise or as a supplier to the enterprise, unless such payments are not market related, or are without commercial rationale or are intended to achieve a circumvention of the provisions of this Statement 100. Terms and concepts analogous to economic interests include, but are not limited to:
- 3.5.1 a shareholder's entitlement to payment of the dividends of a company limited by shareholding, or their entitlement to the dividends of a co-operative society,

- 3.5.2 a partner's entitlement to share in the distributions of a partnership, and
- 3.5.3 a beneficiary's entitlement to share in the distributions of a trading trust.
- 3.6 **"Enterprise"** means the person(s) conducting a business, trade or profession in the Republic of South Africa and recognised in terms of the laws of the Republic of South Africa, whether such enterprise is incorporated or not.
- 3.7 **"Equity Interest"** in relation to a member, means that portion of the equity which the individual members of an enterprise have as claims against the enterprise or against the other members of that enterprise, as the case may be, expressed as a percentage of the total equity in that enterprise. Specifically excluded from the definition of equity interest is a preference share, as contemplated in paragraph 7.13, or a similar instrument or right, or that portion of debenture, similar instrument or right that represents debt. In addition, any instrument or right that does not confer upon the holder thereof a right to participate in the economic interest of the enterprise, as at the date of measurement in terms of this Statement 100, shall not be considered to be an equity interest. Analogous terms and concepts include, but are not limited to:
- 3.7.1 shares (or similar instruments conferring a right in respect of a company), in a company limited by shareholding, or shares in a co-operative society,
- 3.7.2 members' interests in a close corporation, and
- 3.7.3 a partnership interest in a partnership.
- 3.8 **"Equity"**, in relation to any form of enterprise, means the capital invested in that enterprise in respect of which the members have a claim against the enterprise or against the other members of that enterprise by reason of holding an equity interest. Analogous terms and concepts include, but are not limited to:
- 3.8.1 issued share capital in a company limited by shareholding or share capital in a co-operative society,
- 3.8.2 the total of members' interests in a close corporation, and
- 3.8.3 the total interest of all of the partners in a partnership.
- 3.9 **"Fair Market Value"** shall mean a valuation of an equity interest in an enterprise determined by a suitably qualified person using the methodology set out in

statement AC133 of the Generally Accepted Accounting Practice, applicable in the Republic of South Africa, as amended or substituted from time to time.

- 3.10 **"Flow-through Principle"** means the principle set forth in paragraph 5.2 below.
- 3.11 **"Member"** in relation to any form of enterprise, means a person having an equity interest in the equity of that enterprise. If any person exercises any legal rights in relation to an equity interest in terms of fiduciary duties on behalf of another natural person who is a Black person and who is, by law, the member of the enterprise subject to measurement, then the person exercising the rights shall be evaluated as if he/she is a black person. Analogous terms and concepts include, but are not limited to:
- 3.11.1 shareholder of a company limited by shareholding or a shareholder of a co-operative society,
- 3.11.2 a member of a close corporation,
- 3.11.3 a partner in a partnership,
- 3.11.4 a beneficiary of a trading trust, but not any other form of trust,
- 3.11.5 a trustee in any form of trust other than a trading trust, and
- 3.11.6 the sole proprietor in a sole proprietorship.
- 3.12 **"Restriction"** in this Statement 100 shall have the meaning specified in paragraphs 6.3, 6.4, 6.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11 and 7.12. The term **"unrestricted"** used in relation to voting rights or economic interest, means that such voting rights and/or economic interest (as the case may be) are not subject to a restriction. For the avoidance of doubt, any lawful arrangement whereby a member agrees, in writing, to a limitation upon their right to alienate any portion of the equity interest owned by them for a fixed period of time, shall not constitute a restriction.
- 3.13 **"Super-annuation Scheme"** means a "provident fund", a "pension fund" and a "retirement annuity fund", as defined in Schedule 2 of Income Tax Act 58 of 1962.
- 3.14 **"Voting Right"** in relation to a Member, refer to the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as a percentage of the votes to which that member is entitled, over

the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:

- 3.14.1 *the percentage of votes held by a shareholder of a company or a co-operative society at a meeting of the shareholders,*
- 3.14.2 *the percentage of votes held by a member of a close corporation at a meeting of the members, and*
- 3.14.3 *the percentage of votes held by a partner at a partnership meeting.*

4 Ownership Scorecard

- 4.1 *The scorecard set forth in paragraph 4.4 shall be used for the purposes of deriving a score for ownership for the purposes of any BEE scorecard governed by this Statement 100.*
- 4.2 *The scorecard set forth in paragraph 4.4 is measured out of a total of 20 points. If any BEE scorecard governed by this Statement 100, allocates a weighting other than 20 points to ownership in that BEE scorecard, the score for ownership derived using the scorecard in paragraph 4.4 and in this Statement 100, will be adjusted in accordance with the following calculation:*

$$BScore = \frac{SScore}{20} \times BWeight$$

Where:

BScore *is the score for ownership in terms of the applicable BEE scorecard*
SScore *is the score for ownership derived using the scorecard in paragraph 4.4 and this Statement 100*

BWeight *is the weighting allocated to ownership in the applicable BEE Scorecard*

- 4.3 *The calculation of each indicator must be undertaken in strict compliance with the principles set out in this Statement 100.*
- 4.4 *The following table represents the methodology used for the purposes of deriving a score for ownership for any BEE Scorecard governed by this Statement 100:*

Ownership Indicator		Weighting points	Compliance target	Measurement Principles
4.4.1	Voting Rights:			
4.4.1.1	Unrestricted voting rights in the enterprise in the hands of black people	3	25%+1 vote	
4.4.1.2	Unrestricted voting rights in the enterprise in the hands of black women	2	10%	
4.4.2	Economic Interest:			
4.4.2.1	Economic interest in the enterprise to which Black people are entitled	4	25%	
4.4.2.2	Economic interest in the enterprise to which black women are entitled	2	10%	
4.4.2.3	economic interest in the enterprise to which black designated groups are entitled	1	2.5%	
4.4.2.4	Level of unrestricted entitlement of black people to receive their economic interest in the enterprise	8	25%	
4.4.3	Bonus points:			
4.4.3.1	Involvement of new entrants who are black people in the ownership of enterprises	1	As specified below	
4.4.3.2	Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest	1	As specified below	

4.5 It is a general principle of this Statement 100 that, where an enterprise attains a score in respect of an individual ownership indicator, as specified in paragraph 4.4, which is in excess of the corresponding weighting points, then that enterprise shall only be entitled to the corresponding weighting points.

5 Flow Through Principle

5.1 The measurement of the ownership indicators specified in paragraphs 4.4.1 and 4.4.2, shall take into account the flow-through principle specified in paragraph 5.2.

- 5.2 *In determining the entitlement of black people, black women and black designated groups to exercise voting rights in an enterprise or to share in the economic interest of an enterprise, regard is had solely to voting rights and/or economic interest to which black people, black women and black designated groups (as the case may be) who are natural persons, are entitled. In cases where an entitlement to voting rights and/or economic interest is held by juristic persons, regard will be had to voting rights and/or economic interest to which black people, black women and black designated groups (as the case may be) who are natural persons, are entitled, in that juristic person. The same principle will apply throughout the chain of ownership by juristic persons, until such time as that chain terminates in a natural person who is a black person, or who represents black women or black designated groups (as the case may be). The natural black person(s) shall be entitled to such voting rights and/or economic interest.*
- 5.3 *Notwithstanding the provisions of paragraph 5.2, where a member is a fiduciary of any form of enterprise other than a trading trust, which exists for the primary purpose of benefiting a broad base of beneficiaries (such as a community or a broad-based group of natural persons including, without limitation, women, workers and/or employees, youth, the disabled and people living in rural areas) or a lawful collective investment scheme other than a super-annuation scheme, the flow-through principle will be applied mutatis mutandis to the actual distribution of economic interest to black persons who are beneficiaries or to whose benefit such benefit falls.*

6 Measurement of Voting Rights

- 6.1 *The ownership indicators provided for in paragraph 4.4.1.1 to 4.4.1.2 are calculated on the following basis:*

$$VrS = \frac{\%Vr}{\%VrT} \times WP$$

Where

VrS is the score achieved for the ownership indicator being measured
%Vr is the percentage that unrestricted voting rights (in the hands of black people in the enterprise being measured) hold to the total of all voting rights held by members of that enterprise

VrT is the compliance target for voting rights in respect of the applicable ownership indicator being measured, as specified in paragraph 4.4

WP means the weighting points allocated to the applicable ownership

indicator being measured as specified in paragraph 4.4

- 6.2 *The calculation in paragraph 6.1 shall be undertaken in compliance with the flow-through principle.*
- 6.3 *A voting right shall be deemed to be subject to a restriction if, pursuant to the terms of equity interest acquisition by black people or black women (as the case may be) or the financing of such acquisition, the equity interest in whole, or the voting rights attaching to that equity interest are:*
- 6.3.1 *pledged, ceded or similarly encumbered in favour of any other person, or*
- 6.3.2 *made subject to any legal and/or commercial mechanism which is designed to reserve, for any person other than the member, the benefits of that equity interest in whole, or the voting right attaching to that equity interest, for whatsoever purpose, whether generally, or specifically, or for a fixed period, or until or upon, the occurrence of some event; or*
- 6.3.3 *made subject to any legal and/or commercial mechanism which is designed to withhold, defer or restrict in any manner, the exercise of that voting right by the member, for whatsoever purpose, whether generally, or specifically, or for a fixed period, or until or upon, the occurrence of some event, or*
- 6.3.4 *made subject to a restriction upon the member holding such rights to elect a number of directors reasonably proportionate to their holding, or*
- 6.3.5 *made subject to any form of option exercisable by any other person, whereby a member may be compelled to part with all or part, of his/her equity interest, or with all, or part, of his/her voting rights.*
- 6.4 *If a voting right (subject to evaluation in terms of paragraphs 4.4.1.1 to 4.4.1.2) is subject to a restriction, it shall not be taken into consideration in the calculation specified in paragraph 6.1.*
- 6.5 *In instances where a restriction has been structured in such a way as to permit the gradual release of portions of the effected voting rights from the restriction, then the released voting rights shall be recognisable for the purposes of the calculation specified in paragraph 6.1, as and when they are released.*
- 6.6 *Voting rights of a black person exercised by a natural person who is not a black person woman but who acts in a fiduciary capacity or in a representative*

capacity in terms of a specific mandate, shall be considered in the calculation referred to in paragraph 6.1. Such voting rights shall be deemed to be exercised by the holder of those rights.

7 Measurement of Economic Interest

- 7.1 The ownership indicators provided for in paragraphs 4.4.2.1 to 4.4.2.3 are calculated on the following basis:

$$EiS = \frac{\%Ei}{\%EiT} \times WP$$

Where

EIS is the score achieved for the ownership indicator being measured
%Ei is the percentage that economic interest (to which members who fall within the category of black people in the enterprise being measured) holds to the total of all economic interest to which all members of that enterprise are entitled

EiT is the compliance target for economic interest in respect of the applicable ownership indicator being measured, as specified in paragraph 4.4

WP means the weighting points allocated to the applicable ownership indicator being measured, as specified in paragraph 4.4

- 7.2 The ownership indicators provided for in paragraph 4.4.2.4 are calculated on the following basis:

$$UEiS = \frac{UBEi}{\sum Ei} \times WP$$

Where

UEiS is the score achieved for the ownership indicator in paragraph 4.4.2.4
UBEi is the economic interest to which members who are black people are entitled, which is unrestricted

$\sum Ei$ is the total of all economic interest (whether restricted or unrestricted) to which all members of the enterprise are entitled

WP means the weighting points allocated as specified in paragraph 4.4.2.4

- 7.3 The calculations in paragraphs 7.1 and 7.2 shall be undertaken in strict compliance with the flow-through principle.
- 7.4 The calculation in paragraph 7.1 shall not take into account any restrictions upon the economic interest being measured.
- 7.5 The calculation in paragraph 7.2 shall be undertaken with reference to the percentage entitlement to economic interest by black people in the enterprise. Where economic interest is determined by reference to a variable which is undeterminable upon the date of measurement, the percentage entitlement

shall be projected upon a fair and reasonable basis, taking into account the enterprise's historical performance.

7.6 In the calculation in paragraph 7.2, an economic interest to which members who are black people are entitled, will be deemed to be subject to a restriction if, pursuant to the terms of acquisition of equity interest by Black people or of the financing of such an acquisition, the equity interest in whole or the economic interest attaching to that equity interest is:

7.6.1 pledged, ceded or similarly encumbered in favour of any other person, or

7.6.2 made subject to any legal and/or commercial mechanism which is designed to reserve for any person other than the member, the benefits of that equity interest in whole or the economic interest attaching to that equity interest, for whatsoever purpose, whether gerierally or specifically, or for a fixed period, or until, or upon, the occurrence of some event, or

7.6.3 made subject to any legal and/or commercial mechanism which is designed to withhold, defer or restrict in any manner, the receipt of that economic interest by the member, for whatsoever purpose, whether generally or specifically, or for a fixed period, or until, or upon, the occurrence of some event, or

7.6.4 made subject to any form of option exercisable by any other person, whereby a member may be compelled to part with all or part of his/her equity interest or with all or part of his/her economic interest, or

7.6.5 granted in terms of any form of option, exercisable by the member, upon the occurrence of some future event.

7.7 In addition to the provisions of paragraph 7.6 and in the calculation in paragraph 7.2, an economic interest to which members who are black people are entitled will be deemed to be subject to a restriction if:

7.7.1 the acquisition of the equity interest to which the economic interest attaches was financed, in whole or in part, by means of any loan (which for the purposes of this paragraph includes, but is not limited to, any financing arrangement similar or analogous to a loan) made to that black person by any other person, or

- 7.7.2 *the terms of the acquisition of the equity interest to which the economic interest attaches, includes a deferral of the obligation to make payment of the acquisition price (or part thereof) to a later date, following the date of acquisition (or any similar or analogous arrangement).*
- 7.8 *Should economic interest, subject to evaluation in terms of paragraph 4.4.2.4, be subject to a restriction, it shall not be taken into consideration in the calculation specified in paragraph 7.2.*
- 7.9 *In an instance where a restriction has been structured in such a way as to permit the gradual release of portions of the effected economic interest from the restriction, then the released economic interest shall be recognisable for the purposes of the calculation specified in paragraph 7.2, as and when they are released.*
- 7.10 *Should a restriction upon economic interest attaching to an equity interest be partial, that portion which is unrestricted shall be recognisable for the purposes of the calculation specified in paragraph 7.2.*
- 7.11 *Notwithstanding anything to the contrary contained in this paragraph 7, an enterprise subject to measurement in terms of paragraph 7.2 may recognise the following as unrestricted economic interest for the calculation in paragraph 7.2:*
- 7.11.1 *the fair market value of that equity interest upon date of measurement, less the capital value of the loan used to finance the acquisition of the equity interest. A restricted economic interest attaches to the latter upon that date, as a percentage of the fair market value of that equity interest upon that date,*
- 7.11.2 *in respect of an acquisition of an equity interest made subject to a deferral of the obligation to pay the purchase price, the total fair market value of the acquired equity interest less any instalments paid in respect of the purchase price, upon the date of measurement, expressed as a percentage of the total fair market value of the equity interest upon that date, and*
- 7.11.3 *in respect of an option as provided for in paragraph 7.6.5, a fair and reasonable valuation of that option upon the date of measurement, as a percentage of the value of the total economic interest to which black people are entitled,.*

- 7.12 *An option, as provided for in paragraph 7.6.4, shall preclude recognition of the economic interest so restricted until such time as it is released from the restriction.*
- 7.13 *In the instance of any arrangement whereby a member borrows funds from a third person and that third person is granted a preference share, or similar instrument or right, as a means to facilitate repayment of the loan, such a transaction shall be deemed to be a restriction as contemplated in 7.7.1, provided that the preferent right relates only to the economic interest.*

8 The Measurement of the Bonus Points

- 8.1 *An enterprise subject measurement shall be entitled to 1 bonus point towards its score for ownership, under the ownership scorecard provided for in paragraph 4.1, if it can demonstrate that a new black entrant(s) has acquired an entitlement to voting rights and economic interest in that enterprise. For the purposes of this paragraph 8.1, a "new black entrant" shall be any black person(s) who acquires voting rights and economic interest in the enterprise that is in excess of 5% of the total entitlement of all members of that enterprise to economic interest and voting rights where the acquiring new entrant has not prior to said acquisition become so entitled to voting rights and economic interest in any other enterprise which voting right and economic interest have fair market which value exceeds R 20,000,000.00.*
- 8.2 *Provided that the enterprise subject to measurement has scored in excess of 14 points in terms of the ownership scorecard in paragraph 4.4, that enterprise shall be entitled to 0.5 bonus points towards its score for ownership, under the ownership scorecard provided for in paragraph 4.1, if it can demonstrate that it has exceeded its target in respect of any one of the ownership indicators specified in paragraphs 4.4.2.1, 4.4.2.2 or 4.4.2.3, by more than 50% of that target. Furthermore, the enterprise shall be entitled to a further 0.5 bonus points if can demonstrate that it has exceeded its target in respect of any one of the ownership indicators specified in paragraphs 4.4.2.1, 4.4.2.2 or 4.4.2.3, by more than 100% of that target.*

9 Special Provisions Relating to Organs of State, Public Entities and Superannuation Schemes

- 9.1 *In calculating the level of ownership by black people in enterprises in which organs of state, public entities or superannuation schemes (whether public or private sector based) are also members, all voting rights and economic interest to which those organs of state, public entities (as defined in the South African Constitution Act 108 of 1996 and the Public Finance Management Act 1 of 1999) or Super-annuation Schemes are entitled, shall be excluded (both at numerator and denominator level) from all calculations contemplated in this Statement 100, up to the lower of 25% and a level equivalent to the percentage of economic interest (whether restricted or unrestricted) of black people in that enterprise. In this regard:*
- 9.1.1 *Should such organs of state, public entities and super-annuation schemes hold in excess of the amount allowed as exclusion, that excess shall be treated as a non-black investment.*
- 9.1.2 *Should the percentage of economic interest (whether restricted or unrestricted) of black people in that enterprise exceed the level of investment of such organs of state, public entities and super-annuation schemes, only that level of investment will be allowed as an exclusion.*
- 9.2 *In an instance where an enterprise is more than 75% owned by organs of state or public entities (even though those organs of state or public entities may also be super-annuation schemes), then such an enterprise will not be subject to measurement in terms of this Statement 100.*

10 Non circumvention

- 10.1 *The fundamental principle of measurement with respect to the ownership of enterprises by Black people, is that substance must always take precedence over form. As such, any structures created or implemented with the intent to misrepresent the true status of ownership by Black people with a false and/or favourable status, if identified, will result in the loss of the right to rely upon any structures and/or members disclosed as part of such misrepresentation, in any future measurement of black ownership of that enterprise. Rating agencies and other persons performing ratings who are recognised in terms of the Act, are required to maintain a common database of such structures. Notwithstanding*

the foregoing, a bona fide error in calculation never submitted to such a rating agency for evaluation, shall not constitute a violation of this paragraph.

- 10.2 *All representations as to the entitlement to voting rights and/or economic interests by black people, must be capable of being evidenced by means of the submission of the appropriate documentation. Such documentation may include instruments evidencing the holding of an equity interest, agreements between members relating to voting rights and economic interests, and certificates issued by the enterprise's professional advisors. Failure to provide evidence of any such representation if required to do so, will result in the loss of any measurement percentage score associated with the un-evidenced representation.*
- 10.3 *Any person assessing a BEE scorecard should ensure that enterprises completing such a BEE scorecard are provided with reasonable assistance in ensuring that the principles of this statement are adhered to.*

**EXPLANATORY NOTES TO STATEMENT 100:
THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT**

1. Objective:

Statement 100 establishes recognition and measurement criteria for ownership of enterprises by black people.

2. Scope:

- *The statement intends to cover all companies, close corporations, co-operatives, partnerships and trading trusts.*
- *The statement also enables other applicable BEE scorecards or instruments to adopt the recognition and measurement criteria contained in this statement through a conversion formula (See example1).*
- *Beneficiaries under Statement 100:*
 - *"Black people" is defined as per the Broad-based BEE Act (which includes Africans, Coloureds and Indians) but is limited to South African Citizens by birth or a person who obtained citizenship prior to 1994.*
 - *"Black women" is specifically defined.*
 - *"Black designated groups" mean black people who are also workers, youth, people with disabilities or people living in rural areas.*

3. Determination of Ownership Score:

The ownership factor accounts for 20 points (out of a total of 100 points) in the broad-based BEE scorecard published by the dti. This statement determines the number of points achieved by each enterprise out of the 20 ownership points.

In order to achieve different black ownership objectives within the broad-based black economic empowerment framework, an Ownership Allocation Table (figure 1) is proposed to allocate the 20 ownership points. Two key principles underpin the proposed table to allocate ownership points.

These include:

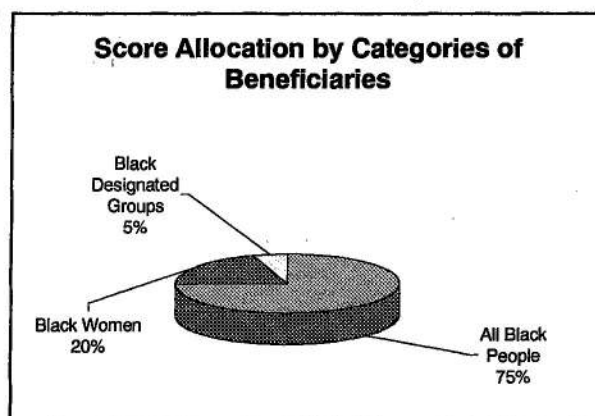
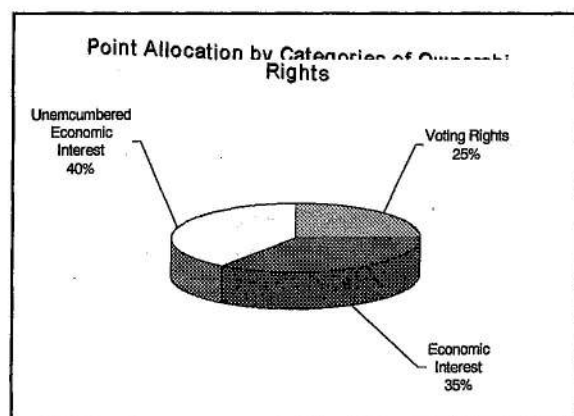
- *Allocation by black people's ability to exercise ownership rights, including:*

- o *unrestricted voting rights,*
 - o *the right to receive economic interest such as dividends and capital gains,*
 - o *unrestricted and unencumbered entitlement to economic interest.*
- *Allocation by the beneficiary base, taking into account participation by:*
 - o *black women,*
 - o *new entrants, and*
 - o *black designated groups (such as black workers, black youth, black people with disabilities and black people living in rural areas).*

Figure 1: Ownership Allocation Table:

Ownership Indicator	Weighting points	Compliance target	Measurement Principles
Voting Rights:			
Unrestricted voting rights in the enterprise in the hands of black people	3	25%+1 vote	
Unrestricted voting rights in the enterprise in the hands of black women	2	10%	
Economic Interest:			
Economic interest in the enterprise to which Black people are entitled	4	25%	
Economic interest in the enterprise to which black women are entitled	2	10%	
Economic interest in the enterprise to which Black designated groups are entitled	1	2.5%	
Level of unrestricted entitlement by black people to receive their economic interest in the enterprise	8	25%	
Bonus points:			
Involvement of new entrants who are black people in the ownership of enterprises	1	As specified below	
Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest	1	As specified below	

(Example 2 illustrates the application of this Ownership Allocation Table)



The above tables indicate the allocation of points by categories of ownership rights and categories of beneficiaries. In addition to these allocations, bonus points equivalent to 5 percent of total ownership score are awarded to new entrants and over-performers.

The purpose of the allocation is to ensure that ownership structures recognised within this statement will ensure the accumulation of wealth by black people over time, without penalising these structures too harshly for the use of vendor or third party funding. In addition, black women and designated groups are specifically included to encourage their inclusion in the mainstream.

4. Key Principles

In addition to the measurement criteria set out in the Ownership Table, the following principles have been identified to benchmark measurement and recognition standards for ownership. These principles aim to promote and further accelerate BEE. These principles also aim to eliminate the recognition of fronting structures and incorrect recognition.

- **Flow-through Principle:** *the flow-through principle states that if the equity is held by a juristic person such as a company or a trust, only the portion owned by black people in the holding enterprise will be recognised. This will apply throughout the chain of ownership to the point where the benefit is received directly by a black natural person. The flow-through principle avoids camouflaging of non-BEE economic interest through the use of black 'fronts', and enables the identification of effective levels of ownership (See example 3).*
- **Options and Contingent Claims:** *Where an option is used where the economic interest is contingent upon a future event, the economic interest will be projected on a fair and reasonable basis, but will be recognised as restricted economic interest.*
- **Organs of State, Pension Funds and Super-annuation Schemes:** *The BEE ownership by organs of state, pension funds and super-annuation schemes are specifically excluded from the calculation from both the numerator and the*

denominator. The amount excluded from total ownership (denominator) is limited to the lower of 25 percent or the level of economic interest owned by black people (see example 4). An enterprise with more than 75 percent ownership by the state is specifically exempted from the application of this statement.

- **Bonus Points:** The statement provides for one (1) bonus point to be awarded for new entrants, where the black people buying into the enterprise have not entered into a previous transaction in which the fair market value of the company exceeded R 20 million in value. The statement also provides for one (1) bonus point to be awarded to companies which have exceeded the 25 percent target for voting rights or economic benefits.
- **Non-Circumvention:** The non-circumvention principle allows for identification of fronting or other structures which aim to misrepresent the level of ownership. Rating agencies are required to maintain a database of such structures. In order to ensure that ownership information is not misrepresented, enterprises are required to provide appropriate documentation to evidence their ownership.

Example 1: Application of Statement 100 when applying other BEE scorecards

The current draft of the ICT charter allocates 15 percent (rather than the dti recommended 20 percent) to ownership. The calculation below illustrates how many ownership points an IT company will score if it applies the ICT charter, if it scores 12 points in terms of Statement 100:

Conversion Formula:

$$BScore = \frac{SScore}{20} \times BWeight$$

Where:

BScore is the score for ownership in terms of the applicable BEE Scorecard
SScore is the score for ownership derived using the scorecard in paragraph 4.4 and Statement 100

BWeight is the weighting allocated to ownership in the applicable BEE Scorecard

Calculation:

The IT company's ownership score in terms of the ICT scorecard is calculated as follows:

$$BScore = 12 \text{ points} / 20 \text{ points} * 15 \text{ percent} = 9 \text{ percent}$$

* The conversion formula allows all industries to apply the same definitions, measurement basis and recognition criteria for ownership, but allows for different weightings set through the charter process.

Example 2: Application of the Ownership Table

Company B has recently entered into a BEE transaction where a BEE consortium acquires 20 percent of its shareholding, the consortium is owned by a black businessman (70 percent) and a black women development trust (30 percent). Half of the shares were acquired and paid for on acquisition, whilst the other half will be paid off over a five year period. All black shareholders have unrestricted voting rights. Neither the black businessman nor the black women development trust have entered into any previous BEE transaction with a value in excess of R 20 million.

Calculation:

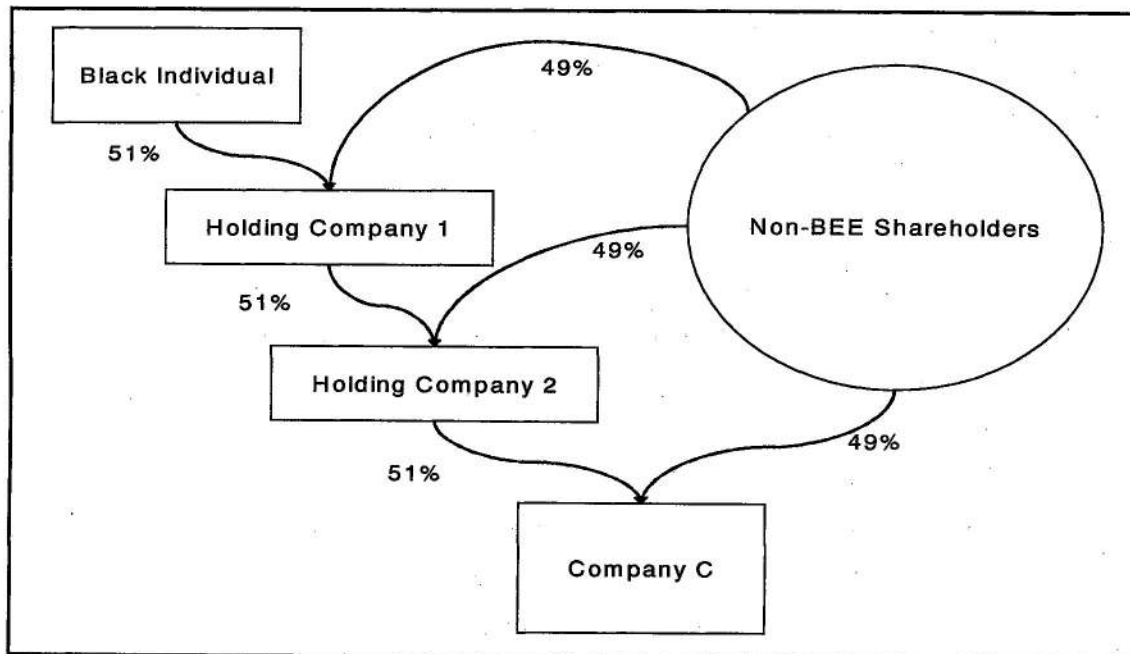
Ownership Indicator	Weighting points	Compliance target	Company B	Compliance Level	Ownership Score
Voting Rights:					
Unrestricted voting rights in the Enterprise in the hands of black people	3	25%+1 vote	20%	$20\%/25\% = 80\%$	2.4
Unrestricted voting rights in the enterprise in the hands of black women	2	10%	6%	$6\%/10\% = 60\%$	1.2
Economic Interest:					
Economic interest in the enterprise to which black people are entitled	4	25%	20%	$20\%/25\% = 80\%$	3.2
Economic interest in the enterprise to which Black women are entitled	2	10%	6%	$6\%/10\% = 60\%$	1.2
Economic interest in the enterprise to which black designated groups are entitled	1	2.5%	0%	$0\%/2.5\% = 0\%$	0.0
Level of unrestricted entitlement of black people to receive their economic interest in the enterprise	8	25%	10%	$10\%/25\% = 40\%$	3.2
Bonus points:					
Involvement of new entrants who are black people in the ownership of enterprises	1	As specified below	Yes	1	1
Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest	1	As specified below	No	0	0

Total Ownership points = 12.2 points

Additional examples using current BEE transactions will also be provided to illustrate the application of the ownership table.

Example 3: Flow-through Principle

A black individual owns 51 percent of Holding Company 1, which holds 51 percent of Holding Company 2, and which in turn holds 51 percent of Company C. How would the flow-through principle affect the determination of ownership in Company C?

**Scenario A: No flow-through application (where black companies are recognised as black individuals as in the case of the financial sector charter)**

Since Holding Company 1 and Holding Company 2 are recognised as black individuals (black companies with > 50 percent shareholding). Company C is 51 percent black owned and meets all criteria. This potentially allows for non-BEE shareholders to hide at different tiers above the holding company to circumvent this statement.

Scenario B: Applying the Flow-through principle

Effective black ownership in Company C is $51\% \times 51\% \times 51\% = 12.5$ percent. This is correct, since for every Rand's worth of dividends and other economic benefits flowing

from C, only 12.5 cents flows into the pockets of black investors. The majority of the benefits (87.5 percent) flow to non-BEE shareholders at different levels of the holding structure.

Example 4: Exclusion of State Ownership, Pension Funds and Super-annuation Schemes

A company is owned by black investors (18 percent), pension funds (20 percent) and other non-BEE investors (62 percent). How can we determine the level of black economic interest in the structure?

Step 1: Determining Direct Black Ownership

Direct Black Ownership = 18 percent

(Pension fund and government holding is specifically excluded)

Step 2: Determine exclusion from total shareholding

Exclusion from total ownership = the lower of 25 percent or the percentage owned by pension funds (20 percent) or the percentage owned by black people (18 percent) = 18 percent

Step 3: Determine total shareholding

Total shareholding = 100 percent less 18 percent = 82 percent

Step 4: Determine overall black economic interest

Economic interest recognised in the scorecard = 18 percent / 82 percent = 21.9 percent

CODE 200: MANAGEMENT**STATEMENT 200:
THE ROLE OF MANAGEMENT CONTROL IN BROAD-BASED ECONOMIC
EMPOWERMENT****Abstract**

This statement deals with the role of management control in broad-based BEE and with the recognition and measurement criteria of the management and control of enterprises. One of the objectives of the Broad-based Black Economic Empowerment Act is increasing the number of black people that manage, own and control enterprises and productive assets. The objective of this statement is to provide recognition and measurement criteria for the black management and control of enterprises.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

December 2004

THE ROLE OF MANAGEMENT CONTROL IN BROAD-BASED ECONOMIC EMPOWERMENT

CONTENTS

	<i>Paragraphs</i>
INTRODUCTION.....	01.-02.
OBJECTIVES	03.-04.
SCOPE.....	05.-06.
DEFINITIONS	07.-15.
KEY PRINCIPLES OF MANAGEMENT AND CONTROL.....	16.-20.
RECOGNITION CRITERIA	21.-24.
MEASUREMENT CRITERIA.....	25.-27.
TARGET AND WEIGHTINGS.....	28.-29.

Introduction

1. *This statement deals with the role of management control in broad-based economic empowerment as well as with the recognition and measurement criteria for the black management control of enterprises.*

2. *The process of BEE must result in an increase in the ownership and control of the economy by black persons. This means that a significant proportion of black people's ownership of assets and enterprises must be a controlling interest, reflecting genuine participation in decision-making at board, executive management and operational levels, and the assumption of real risk.*

Objectives

3. *One of the objectives of the Broad-based Black Economic Empowerment Act is increasing the number of black people that manage, own and control enterprises and productive assets.*

4. *The objective of this statement is to provide recognition and measurement criteria for black management control of enterprises.*

Scope

5. *This statement should be applied in the recognition and measurement of black management control by every organ of state and public enterprise in:*
- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law,*
 - (b) developing and implementing a preferential procurement policy,*
 - (c) determining qualification criteria for the sale of state-owned enterprises, and*
 - (d) developing criteria for entering into partnerships with the private sector.*
6. *The statement should also be applied to ensure a uniform approach to the black management control aspect of broad-based BEE by: all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.*

Definitions

7. **Act** means the Broad-based Black Economic Empowerment Act 53 of 2004.
8. **Black People** is a term that bears the same meaning as defined in the Act, save that it is limited to South African citizens.
9. **BEE Scorecard:** a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set forth in terms of a Code of Good Practice issued under the Act.
10. **Enterprise:** the person(s) conducting a business, trade or profession in the Republic of South Africa and recognised in terms of the laws of the Republic of South Africa, whether or not such enterprise is incorporated.

11. **Governing Body:** *a conceptual body whose representatives' main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of the enterprise.*
12. **Member:** *(in relation to any form of enterprise), is defined as a person having an equity interest in the equity of that enterprise. Analogous terms and concepts include, but are not limited to:*
- a) *a shareholder of a company limited by shareholding or a shareholder in a co-operative society,*
 - b) *a member of a close corporation,*
 - c) *a partner in a partnership,*
 - d) *a beneficiary in a trading trust, and*
 - e) *the sole proprietor in a sole proprietorship.*
13. **Voting Right:** *(in relation to a member) the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as the percentage of the votes to which that member is entitled, over the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:*
- a) *the percentage of votes held by a shareholder of a company or a co-operative society at a meeting of the shareholders,*
 - b) *the percentage of votes held by a member of a close corporation at a meeting of the members, and*
 - c) *the percentage of votes held by a partner at a partnership meeting.*
14. **Weighting:** *the percentage of a BEE scorecard allocated to the measurement of management control by black people. In terms of Statement 000 issued as a Code of Good Practice under the Act, the weighting for management control is 10% in the case of BEE scorecards completed in compliance with that statement. Other Codes of Good Practice may specify different weightings for management control for their own purposes.*

15. *The example provided in the Appendix of this statement is inserted for clarification and information only and should not be considered a substantive provision within this statement.*

Key principles of management control

16. *The recognition and measurement of the control aspect as it pertains to Voting Rights in Relation to a Member is dealt with under BEE Statement 100 entitled 'The Role of Equity Ownership in Broad-based Economic Empowerment'.*
17. *This statement deals with the representation of black people in executive management and/ or executive board and board committees.*
18. *Management refers to representation on the governing body of the enterprise.*
19. *Representatives of the governing body of the enterprise are those individuals who are involved in the determination of the strategy of the enterprise as well as in the operational implementation of such strategy. This is the case regardless of whether or not the operational implementation of the strategy is delegated by management to one or more individuals who are not representatives of the board or similar governing body of the enterprise.*
20. *There is a difference between a full-time or executive manager, who participates in the day to day management of the enterprise's affairs and a non-executive manager who has not undertaken any special obligation. The latter is not bound to give continuous attention to the affairs of the enterprise. A non-executive manager's duties are of an intermittent nature, performed at periodic management meetings and at any other meetings which may require the non-executive representative's attention.*

Recognition criteria

21. *In recognising management control of an enterprise, the governing body of the enterprise is considered.*

22. *Acceptance of appointment to the governing body of an enterprise by an individual, as evidenced through relevant secretarial documentation, is not sufficient evidence that the individual concerned participates in the management of the enterprise. In order to be recognised as part of management, the representative of the governing body of the enterprise must be involved in the strategic and operational aspects of the enterprise as detailed in paragraph .19 above.*
23. *In certain instances, even though a representative of a governing body of the enterprise can attend any and all governing body meetings and exercise a vote at these meetings, the ability of the individual to participate in the management control of the enterprise is constrained due to clauses in members' agreements or other, like agreements, which confer a disproportionate amount of management decision making capabilities on certain representatives of the governing body. In such circumstances, the determination of management control should take cognisance of the disproportionate amount of management decision-making capability vested in certain representatives of the governing body of the enterprise.*
24. *An alternate of a governing body representative is not recognised in the determination of the management control of an enterprise, because an alternate of a governing body representative only operates when his/her nominator does not act him/her- self.*

Measurement

25. *The measurement of black management control is calculated as the weighted proportion of black persons represented on the governing body of the enterprise.*
26. *Owing to the difference in operational decision making capabilities of non-executive and executive representatives of the governing body of the Enterprise, as detailed in paragraph .20 above, and the difference in operational decision making influence of different representatives of the governing body of an enterprise, different representatives of the governing body are awarded different*

weightings as per the table below, for the purpose of determining management control.

27. Black women representatives on the governing body will be awarded a 50% higher allocation as illustrated in the table below:

Governing body position	Allocation	Black Women Allocation
Chief Executive Officer Chief Financial Officer Chief Operating Officer Chairman	2.00	3.00
Other executive members of the governing body Non Executive Chairman	1.00	1.5
Non Executive members of the governing body	0.5	0.75

Targets and weighting

28. The black management representation target shall be 40% and shall be recognised and measured in terms of the criteria above. Should an enterprise attain the management control target, the enterprise will be awarded 100% of the weighting as per the BEE scorecard.
29. The maximum score towards the management control target that an enterprise can claim for black representation at the non-executive level is 10%.

APPENDIX 1

Example

Assume Enterprise A's governing body composition is as follows:

Governing body position	Black Male	Black Women	Non - Black
Executive Chairman	-	-	1
Chief Executive Officer	-	-	1
Chief Operating Officer	-	-	1
Chief Financial Officer	-	1	-
Executive	2	1	20
Non Executives	5	4	-
Total	7	6	23

On a weighted basis, the representation is as follows:

Governing body position	Black	Black Women	Non-Black	Total
Executive Chairman	-	-	2.0	2.0
Chief Executive Officer	-	-	2.0	2.0
Chief Operating Officer	-	-	2.0	2.0
Chief Financial Officer	-	3.0	-	3.0
Executive	2.0	1.5	20.0	23.5
Non Executives	2.5	3.0	-	5.5
Total	4.5	7.5	26.0	38

The weighted black representation is as follows:

At the non executive level: $5.5/38 = 14.5\%$ limited to 10%

At all other levels: $6.5/38 = 17.1\%$

Total = $10\% + 17.1\% = 27.1\%$

As a result, black management representation in the example will amount to 27.1%.

Consequently, the enterprise will be able to claim $27.1\%/40\% = 0.6775$ multiplied by the weighting, being 10 i.e. the percentage score for enterprise A is 6.775 %.

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