

V. ELB. R. WENTZEL

10. FRANKER ROAD  
11. 010 30 0000  
12. 010 30 0000  
13. 010 30 0000  
14. 010 30 0000  
15. 010 30 0000  
16. 010 30 0000  
17. 010 30 0000  
18. 010 30 0000  
19. 010 30 0000  
20. 010 30 0000



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 486

Pretoria, 20 December  
Desember 2005

No. 28351



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

---

**CONTENTS**

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
------------	---------------------	------------------------

**GENERAL NOTICE****Trade and Industry, Department of***General Notice*

2036	Notice in the Draft 2nd Phase of the Codes of Good Practice on Broad-Based Black Economic Empowerment .....	3	28351
------	---	---	-------

---

---

## GENERAL NOTICE

---

### NOTICE 2036 OF 2005

#### Department of Trade and Industry

#### **NOTICE OF THE DRAFT 2<sup>ND</sup> PHASE OF THE CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE)**

---

The Minister of Trade and Industry intends to gazette the Codes of Good Practice on B-BBEE as legislation.

The draft 2<sup>nd</sup> Phase of the Codes of Good Practice on B-BBEE is hereby released for a public commentary process.

Written comments must be received no later than the 30<sup>th</sup> March 2006 and must be addressed to:

**The Chief Director  
Attention : Ms. Polo Radebe  
The Department of Trade and Industry  
Private Bag X84,  
Pretoria  
0001  
Tel No. : (012) 394 – 1636  
Fax No. : (012) 394 – 2636  
e-mail address : [bee-cgp@thedti.gov.za](mailto:bee-cgp@thedti.gov.za)**

# **Codes of Good Practice for Broad – Based Black Economic Empowerment**



## **Second Phase 20 December 2005**

FOR INFORMATION  
AND  
PUBLIC COMMENT  
At  
[bee-cgp@thedti.gov.za](mailto:bee-cgp@thedti.gov.za)



**the dti**

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA



**DEPARTMENT OF TRADE AND INDUSTRY****EXECUTIVE SUMMARY****THE 2<sup>nd</sup> PHASE OF CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

The Department of Trade and Industry (the dti) has been tasked with the drafting of the codes of good practice on BEE as per the requirements of the Broad-Based Black Economic Empowerment (BBBEE) Act no.53 of 2003. One objective of these codes is to provide further clarity and guidance on the interpretation and definition of BBBEE.

The first phase of the codes of good practice on BBBEE, was launched in November 2005, which covers the conceptual framework, the measurement of Ownership and Management Control, as well as interpretations of the individual statements.

The second phase of the codes of good practice on BBBEE, which is the subject matter of this document, covers 5 components of the BBBEE scorecard, thus, preferential procurement, employment equity, skills development, enterprise development, residual (industry specific and corporate social investment initiatives), and also the Qualifying Small Enterprise sections. Other statements covered include fronting practices, specific verification issues relating to the complex structures, multinationals, State-owned / public entities.

These codes will encourage all entities, both public and private, through the issuing of licenses, concessions, sale of assets and preferential procurement to implement proper BBBEE initiatives. Thus, the codes of good practice provide a standard framework for the measurement of broad-based black economic empowerment across all sectors of the economy.

The individual statements are summarized below:

## STRUCTURE OF THE CODES OF GOOD PRACTICE

### **Code 000: Statement 001: Fronting practices and other Misrepresentation of BBBEE Status;**

This statement provides clarity on fronting practices and risks, and specifies the requirements for reporting of fronting practices. It also provides guidance for the determination and evaluation of fronting risk, and specifies the consequences of fronting practices.

Some of the examples of fronting contained in this statement include:

- Window dressing,
- Benefit Diversion,
- Opportunistic Intermediaries.

### **Code 000: Statement 002: Specific Verification Issues relating to complex structures**

This statement provides guidance as to which Measured Entities are subject to measurement under the codes and as to the consolidation of compliance data in certain specific instances.

It further provides guidance as to the attribution and separation of compliance data and clarity as to transfer of certain BEE contributions in the event of a sale of business.

### **Code 100: Statement 102: The Recognition of Ownership contributions arising from Investments by BEE Targeted Warehousing Funds,**

This statement seeks to specify the key measurement principles associated with ownership by and contributions to Warehousing Funds, for the purposes of facilitating BEE transactions.

A Warehousing fund is defined as a fund established by an enterprise, organs of the state or public entity for the specific purpose of holding an equity interest in another enterprise from exiting black participants for a fixed duration of time with the obligation of ultimately transferring that equity interest into ownership by the intended black participants and should be approved by the minister of Trade and Industry.

**Code 100: Statement 103: The recognition of Ownership Contributions by Multinational Companies,**

This statement defines the key measurement principles applicable to measurement of ownership contributions by Multinational Businesses and South African Multinationals. It further provides for the recognition of Equity Equivalent contributions made by Multinational Businesses, and provides for the recognition of ownership contributions arising from sales of offshore Equity Interests.

The statement further provides for the recognition of ownership contributions arising from sales of businesses or assets by the Multinational Businesses or South African Multinationals; and specifies the approach to measurement of ownership contributions made by South African Multinationals.

The statement continues to provide recognition of certain public programs or schemes as equity equivalents by Multinational Businesses to be approved by the minister of Trade and Industry in consultation with the sectoral line minister, premiers or other stakeholders in any government department, provincial government or local government.

This statement also allows both Multinational Businesses as well as South African Multinationals to receive indicative points on their Ownership Scorecard after having implemented some of the initiatives allowed for in this statement.

**Code 100: Statement 104: The recognition of Ownership Contributions made by Public Entities and the Organs of State,**

This statement specifies the basis for the award of indicative points for the ownership Element of broad-based black economic empowerment in respect of public entities wholly owned by organs of state and in respect of organs of state. It further specifies the basis for the recognition of ownership of Equity Interests held by Designated Public Entities as being black ownership.

**Code 100: Statement 105: The recognition of Ownership Contributions made by Companies limited by Guarantee and Section 21 Companies.**

This statement specifies the basis for the award of indicative points for the ownership Element of broad-based black economic empowerment in respect of companies limited by guarantee and section 21 companies; and it further specifies the basis for recognition of ownership of Equity Interests held by companies limited by guarantee

and section 21 companies.

**Code 300: Statement 300: Employment Equity**

This statement measures initiatives targeted to achieve employment equity in respect of all measured entities in the workplace. A fundamental principle of this statement is to ensure alignment with the Employment Equity Act.

The statement provides targets for the inclusion of black people in occupational levels other than top management and semi-skilled and unskilled levels.

The statement also emphasizes the importance of black women within Employment Equity through the allocation of half of the points to the inclusion of black women in Senior to Middle management positions.

**Code 400: Statement 400: Skills Development**

This statement measures initiatives implemented by employers that are targeted at the promotion of competencies of black people within an organization.

*It further specifies the skills development scorecard, which will be used to measure the amount of contributions made by the measured entities towards development of black people.*

This statement is in line with the National Skills Development Act (1998), National Skills Development Strategy and Skills Development Levies Act.

It further specifies the basis for the measurement of the organizational transformation contributions to BEE which is a qualitative aspect to transformation within the organization.

**Code 500: Statement 500: Preferential Procurement**

This statement measures the extent to which enterprises procure from companies that are BEE compliant. This also includes Micro Enterprise as well as qualifying small enterprises. A preferential procurement scorecard has been included to provide targets for Preferential Procurement from the above-mentioned compliant suppliers.

The statement further provides the key measurement principles to be applied when calculating preferential procurement contributions to BBBEE. It further specifies principles to be applied when calculating BEE Procurement Spend, and specifies the formula for the calculation of the individual criteria specified in the preferential scorecard.

**Code 600: Statement 600: Enterprise Development**

This statement measures specific initiatives for assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such beneficiary entities through the expansion of those beneficiary entities' financial and/or operational capacity

It further specifies the key measurement principles to be applied when calculating Qualifying Enterprise Development Contributions to BBBEE and provides guidance in terms of the measurement of monetary and non-monetary contributions.

The statement further encourages Enterprise Development initiatives in rural communities and in any geographical areas identified by government.

In addition, a bonus point will be awarded against submission by the measured entity of adequate proof that it contributed to job creation.

**Code 700: Statement 700: Residual Element**

This statement specifies initiatives intended to directly provide black people who are natural persons, with a means of generating income for themselves.

It is a fundamental principle of this statement to encourage initiatives intended to facilitate access to the economy by black people and is inclusive of both Corporate Social Investment and Industry specific contribution.

It further specifies key measurement principles to be applied when calculating Qualifying Residual Contributions to BBBEE. It also provides formula for the calculation of the criteria specified in the residual contribution scorecard, and is the basis for the award of bonus points.



**Code 1000: Statement 1000 - 1700: Qualifying Small Enterprise**

These statements are meant to measure BBBEE in all the components of qualifying small enterprises. This will include the conceptual framework, the measurement of ownership, management, employment equity, skills development, preferential procurement, enterprise development, and the residual element of qualifying small enterprises.

These codes attempt to provide a much less onerous BEE compliance regime by providing certain exceptions.

**Conclusion**

The dti will also be requesting public submission on the treatment of indirect ownership within BBBEE, which includes pension funds, private funds, private equity and asset managers.

The dti intends to use the codes of good practices to guide and direct the BBBEE process within the South African economy. It is noteworthy that these codes of good practice are released for a 60-day public commentary period, with the intention of gazetting both phase 1 and 2 of the Codes of Good Practice on BBBEE.

**INDEX TO THE 2<sup>ND</sup> PHASE OF THE  
CODES OF GOOD PRACTICE FOR  
BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

<b><u>CODES / STATEMENTS</u></b>	<b><u>DESCRIPTION</u></b>
	Executive Summary
	Request for Input on Indirect Ownership
<b>Code 000</b>	<b>Broad-Based Black Economic Empowerment Framework</b>
Statement 001	Fronting Practices and other Misrepresentation of B-BBEE Status
Statement 002	Specific Verification issues relating to Complex Structures
<b>Code100</b>	<b>Measurement of the Ownership element of B-BBEE</b>
Statement 102	The Recognition of Ownership Contributions arising from Investments by BEE Targeted Warehousing Funds
Statement 103	The Recognition of Ownership Contributions by Multinational Companies
Statement 104	The Recognition of Ownership Contributions made by Public Entities and Organs of the State
Statement 105	The Recognition of Ownership Contributions made by Companies limited by Guarantee and Section 21 Companies
<b>Code 300</b>	<b>Measurement of the Employment Equity Element of Broad-Based Black Economic Empowerment</b>
Statement 300	The Recognition of Employment Equity Contributions
<b>Code 400</b>	<b>Measurement of the Skills Development Element of Broad-Based Black Economic Empowerment</b>
Statement 400	The Recognition of Skills Development and Organisational Transformation Contributions to Black Economic Empowerment

**Code 500**                      **Measurement of the Preferential Procurement Element of  
Broad-Based Black Economic Empowerment**

Statement 500   The Recognition of Preferential Procurement Contributions

**Code 600**                      **Measurement of the Enterprise Development Element of  
Broad-Based Black Economic Empowerment**

Statement 600   The Recognition of Enterprise Development Contributions

**Code 700**                      **Measurement of the Residual Element of Broad-Based Black  
Economic Empowerment**

Statement 700   The Recognition of Residual Contributions

**CODES OF GOOD PRACTICE ON**  
**BROAD-BASED BLACK ECONOMIC EMPOWERMENT FOR**  
**QUALIFYING SMALL ENTERPRISES**

<b><u>CODES / STATEMENTS</u></b>	<b><u>DESCRIPTION</u></b>
<b>Code 1000</b>	<b>Framework for the Measurement of Broad-Based Black Economic Empowerment amongst Qualifying Small Enterprises</b>
Statement 1000	The Organisation of the Codes of Good Practice pertaining to Qualifying Small Enterprises, The Elements of Broad-Based Black Economic Empowerment and the Qualifying Small Enterprise Scorecard
Annexe 1000-A	<b>Model Qualifying Small Enterprise Scorecard</b>
Annexe 1000-B	<b>Qualifying Small Enterprise Identification Table</b>
<b>Code 1100</b>	<b>Measurement of the Ownership Element for Qualifying Small Enterprises</b>
Statement 1100	The General Ownership Scorecard and the Recognition of Ownership arising from the Sale of Equity Instruments for Qualifying Small Enterprises
<b>Code 1200</b>	<b>Measurement of the Management Control Element for Qualifying Small Enterprises</b>
Statement 1200	The General Recognition of Management Control for Qualifying Small Enterprises
<b>Code 1300</b>	<b>Measurement of the Employment Equity Element for Qualifying Small Enterprises</b>
Statement 1300	The Recognition of Employment Equity Contributions for Qualifying Small Enterprises
<b>Code 1400</b>	<b>Measurement of the Skills Development Element for Qualifying Small Enterprises</b>
Statement 1400	The Recognition of Skills Development and Organisational Transformation Contributions for Qualifying Small Enterprises

- Code 1500**                      **Measurement of the Preferential Procurement Element for Qualifying Small Enterprises**
- Statement 1500    The Recognition of Preferential Procurement Contributions for Qualifying Small Enterprises
- Code 1600**                      **Measurement of the Enterprise Development Element for Qualifying Small Enterprises**
- Statement 1600    The Recognition of Enterprise Development Contributions for Qualifying Small Enterprises
- Code 1700**                      **Measurement of the Residual Element for Qualifying Small Enterprises**
- Statement 1700    The Recognition of Residual Contributions for Qualifying Small Enterprises





REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

It is hereby notified that the Minister of Trade and Industry requests public submissions and recommendations as to appropriate recognition of ownership contributions to broad-based black economic empowerment facilitated through Indirect Ownership. Interested persons are invited to furnish the Minister with submissions within 60 days of the date of publication.

## 1 OBJECTIVES

- 1.1 The Broad-Based Black Economic Empowerment Act contemplates the recognition of various forms of contributions by the public and the private sector towards the attainment of black economic empowerment.
- 1.2 In addressing the issue of the ownership element of black economic empowerment, the Department of Trade and Industry (DTI) has proposed several models of recognition or non-recognition for indirect ownership in the various drafts of Code 100 Statement 100 that have been released since 8 December 2004.
- 1.3 The DTI has noted from the various public responses received that there are extremely divergent views among stakeholders in the economy, as to whether indirect ownership should be recognised and as to the basis upon which it may be recognised.
- 1.4 In the interests of ensuring that the roll-out of the Codes of Goods of Good Practice was not delayed by this divergence of opinion, the DTI elected to release the first and second phase of those Codes without attempting to address the question of indirect ownership.
- 1.5 The government recognises the important role that indirect ownership can play in advancing the objectives of black economic empowerment, but is of the view that the treatment of indirect ownership under the Codes of Good Practice must be:
  - 1.5.1 consistent with the Broad-Based Black Economic Empowerment Act and the Strategy Document issued under by the DTI in March 2003 ; and
  - 1.5.2 based upon a national consensus achieved through public discourse involving all stakeholders in the economy.
- 1.6 Accordingly, public representations and proposals are requested as to an appropriate treatment for indirect ownership under the Codes of Good Practice.
- 1.7 Persons making representations and proposals must address all relevant content of the Broad-Based Black Economic Empowerment Act and the Strategy Document in their submissions and should, wherever possible, support any proposals with appropriate research.

## 2 TIMING AND INTERIM ARRANGEMENTS

- 2.1 The DTI is acutely aware of the urgency of settling the question of indirect ownership. As such, written responses must be received within 60 days of the date of issue of this

request.

- 2.2 The DTI undertakes to apply all reasonable endeavours to ensuring that a public statement as to the treatment of indirect ownership is made as soon as possible following the closing date for submissions.
- 2.3 In the interim and until such time as the DTI has released the statement referred to in paragraph 2.2, interested parties are encouraged to provisionally recognise all contributions to the ownership element of black economic empowerment arising from indirect ownership arrangements provided that those arrangements meet the requirements for Broad-Based Ownership Schemes as contemplated in Code 100 Statement 100.

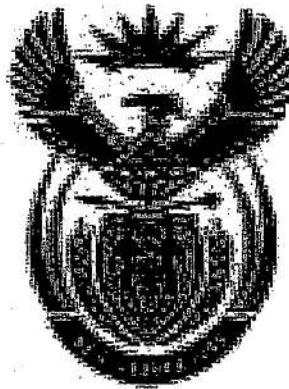
### 3 TERMS OF REFERENCE

- 3.1 A variety of indirect ownership models exist in the South African economy.
- 3.2 These models are commonly characterised by beneficial ownership by an entity on behalf of or by natural persons in circumstances where those natural persons:
- 3.2.1 are precluded from exercising voting rights or control over the management of funds owned by or on behalf of them; or
- 3.2.2 exercise voting rights or control over the management of funds owned by or on behalf of them through an intermediary such as a board of trustees or a management company.
- 3.3 While similar characteristics have been specifically dealt with in the case of broad-based ownership schemes and trusts in Code 100 Statement 100, public commentary and recommendations are requested as to the appropriate manner of treating investments made by:
- 3.3.1 pension funds, provident funds and other post retirement funding schemes;
- 3.3.2 private equity funds;
- 3.3.3 property unit trusts;
- 3.3.4 asset managers; and
- 3.3.5 all other forms of collective investment not currently dealt with in Code 100 Statement 100.

#### 4 REQUIRED INPUTS

Should indirect ownership be recognised in the Generic Scorecard and/or the Ownership Scorecard, and if so, on what basis? In particular:

- 4.1 Should indirect ownership count towards the target for ownership under the ownership scorecard or should indirect ownership be measured separately?
- 4.2 Should there be a separate target for indirect ownership and if so, how many points should be allocated to indirect ownership and what would be an appropriate target?
- 4.3 How should indirect ownership be measured, having particular reference to complex models such as pension funds, provident funds and other post retirement funding schemes?



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.



## CODE 000: FRAMEWORK FOR THE MEASUREMENT OF BROAD BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 001: FRONTING PRACTICES AND OTHER MISREPRESENTATION OF BEE STATUS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions .....	1
2 Interpretation of this statement.....	3
3 Application of this statement .....	3
4 Objective of this statement.....	3
5 General Principle .....	3
6 Fronting practices .....	4
7 Indicators of Fronting Risk .....	4
8 Interpretation of Risk Indicators .....	5
9 Reporting on Fronting practices .....	6
10 Guidelines for the Determination and Evaluation of Fronting Risk.....	6

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Affected Decision Makers" means individuals who are tasked with making economic decisions on behalf of an organ of state, a public entity or an Enterprise, where the economic decisions involve the consideration of an Enterprise's BEE Status;
- 1.2 "BEE Status" means the compliance bands referred to in Code 000 Statement 000 and in Code 1000 Statement 1000;
- 1.3 "BEE" means black economic empowerment;

- 1.4 "black people" bears the same meaning as defined in Code 000 Statement 000;
- 1.5 "Companies Act" means the Companies Act of 1973;
- 1.6 "Enterprise" bears the same meaning as defined in Code 100 Statement 100;
- 1.7 "Excessive Rate" means a rate of interest charged on any loan advanced to an Enterprise by a Related Person which exceeds the rate of interest which the Related Person would ordinarily receive in respect of any equivalent loan from its bankers by a percentage which is in excess of half of the difference between that rate of interest and the Maximum Rate;
- 1.8 "Fronting Risk Indicators" means the list of risk indicators identified in paragraph 7 and which are considered to be indicative of the presence of Fronting practices;
- 1.9 "Fronting" means any practices or initiatives which are in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to black economic empowerment under the Codes;
- 1.10 "holding company" shall be interpreted *mutatis mutandis* by reference to the definition provided in section 1(4) of the Companies Act;
- 1.11 "Maximum Rate" means the rate specified in respect of the maximum annual finance charge rate as determined in terms of section 1(a) of the Usury Act of 1968. To the extent that regulations under section 1(a) of the Usury Act of 1968 specify different maximum rates of annual finance charge rate against various lending thresholds, the rate in respect of the upper most threshold shall apply;
- 1.12 "Related Person" of a measured Enterprise means another person:
- 1.12.1 which is directly or indirectly controlled by a measured Enterprise;
- 1.12.2 which is directly or indirectly controlled by the natural persons who have direct or indirect control over that measured Enterprise or the immediate family of those natural persons; and
- 1.12.3 over whom the measured Enterprise has direct or indirect control;
- 1.13 "subsidiary" shall be interpreted *mutatis mutandis* by reference to the definition provided in section 1(3) of the Companies Act;

- 1.14 **"Transfer Pricing"** means transactions where goods and/or services are supplied to or acquired from a Related Person by an Enterprise where the goods and/or services are supplied at a significantly higher or lower rates than the market rate for such goods and/or services;
- 1.15 **"Verification Agency"** means a BEE Verification Agency duly accredited in terms of Code 000, Statement 020; and
- 1.16 **"Verification Certificate"** means a BEE certificate issued by a Verification Agency in compliance with the Codes.

## 2 INTERPRETATION OF THIS STATEMENT

- 2.1 When interpreting a provision of this statement, any reasonable interpretation which is consistent with the objectives of the Act must be preferred over any other interpretation which is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

## 3 APPLICATION OF THIS STATEMENT

This statement applies to all Enterprises subject to the Codes.

## 4 OBJECTIVE OF THIS STATEMENT

The objectives of this statement are as follows:

- 4.1 to specify Fronting practices;
- 4.2 to identify the indicators of Fronting Risk;
- 4.3 to specify the requirements for reporting of Fronting practices;
- 4.4 to define the guidelines for determination and evaluation of Fronting Risk; and
- 4.5 specify the consequences of Fronting practices.

## 5 GENERAL PRINCIPLE

- 5.1 In evaluating any Enterprise for any purposes contemplated in the Act or the Codes, Verification Agencies and Affected Decision Makers are expected to apply all reasonable efforts to identify Fronting practices and, in so doing, must ensure that substance must always take precedence over legal form.

- 5.2 Notwithstanding the foregoing, nothing in this statement should be construed as requiring Verifications Agencies or Affected Decision Makers violate the constitutional rights of any person.

## 6 FRONTING PRACTICES

Fronting practices include, but are not limited to:

- 6.1 **Window-dressing:** This includes cases in which black people are appointed or introduced to an Enterprise on the basis of tokenism and may be:
- 6.1.1 discouraged or inhibited from substantially participating in the core activities of an Enterprise; and
  - 6.1.2 discouraged or inhibited from substantially participating in the stated areas and/or levels of their participation;
- 6.2 **Benefit Diversion:** This includes initiatives implemented where the economic benefits received as a result of the BEE Status of an Enterprise do not flow to black people in the ratio as specified in the relevant legal documentation.
- 6.3 **Opportunistic Intermediaries:** This includes Enterprises which have concluded agreement with other Enterprises with a view to leveraging the Opportunistic Intermediary's favourable BEE Status in circumstances where the agreement involve:
- 6.3.1 significant limitations or restrictions upon the identity of the Opportunistic Intermediary's suppliers, service providers, clients or customers;
  - 6.3.2 the maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
  - 6.3.3 terms and conditions which are not negotiated at arms-length on a fair and reasonable basis.

## 7 INDICATORS OF FRONTING RISK

- 7.1 Fronting will be identified by reference to the Fronting Risk Indicators as outlined in the table in paragraph 10.4. These risk indicators may be either high-risk or moderate risk in nature.
- 7.2 **High-Risk Indicators:**
- 7.2.1 the black people which an Enterprise claims are its shareholders, executives or

management are unaware or uncertain of their role or participation within an Enterprise;

7.2.2 the black people who serve in executive or management positions in an Enterprise are paid significantly lower than the market norm, unless all executives or management of an Enterprise are paid at a similar level;

7.2.3 an Enterprise only performs peripheral or marketing functions and performs no other significant operational functions as would be reasonably expected from such an Enterprise;

7.2.4 an Enterprise relies on a third-party to conduct the majority of core functions normally conducted by Enterprises similar to an Enterprise;

7.2.5 an Enterprise cannot operate independently without a third party, as a result of contractual obligations or the lack of technical or operational competence; and

7.2.6 any practice which circumvents or attempts to circumvent Codes.

7.3 Moderate-Risk Indicators:

7.3.1 the black people identified by an Enterprise as its shareholders, executives or management have limited knowledge of an Enterprise;

7.3.2 there is no significant indication of active participation by black people identified as top management at strategic decision making level;

7.3.3 an Enterprise pays management or administration fees to a Related Person or shareholder with no BEE Status;

7.3.4 an Enterprise acquires goods and/or services at a significantly different rate than market from a Related Person or shareholder (Transfer Pricing);

7.3.5 an Enterprise obtains loans, not linked to the share acquisition, from a Related Person at an Excessive Rate; and

7.3.6 an Enterprise shares all premises and infrastructure with a Related Person, or with a shareholder with no BEE Status or a third-party operating in the same industry where the cost of such premises and infrastructure is disproportionate to market-related costs.

## 8 INTERPRETATION OF RISK INDICATORS

8.1 When expressing their opinion on the BEE Status of an Enterprise, a Verification Agency must consider whether that Enterprise demonstrates evidence of any of the Indicators of



Fronting Risk in paragraphs 7.2 and 7.3. Any indicators so identified must be evaluated in accordance with paragraphs 10.1 to 10.4.

- 8.2 Where no verification from a Verification Agency has been obtained, Affected Decision Makers should also consider these risk indicators before making decisions and are encouraged to apply the evaluation approach contained in paragraphs 10.1 to 10.4.

## **9 REPORTING ON FRONTING PRACTICES**

- 9.1 Verification Agencies are responsible for the identification, determination and reporting of Fronting Risks.
- 9.2 Affected Decision Makers are encouraged to assume responsibility for the identification, determination and reporting of Fronting Risks.
- 9.3 Both the accreditation body and the industry body envisaged in Code 000 Statement 020, must review the accreditation of a Verification Agency if a Verification Agency fails to identify an Enterprise implementing Fronting practices, unless:
- 9.3.1 the Verification Agency can demonstrate that it exercised due professional care and complied with all of its obligations in evaluating the BEE Status of an Enterprise;
  - 9.3.2 the verification analysis was based on misrepresentation, frauds and/or forgeries by the Enterprise; and
  - 9.3.3 an Enterprise has engaged in Fronting practices after the receipt of the Verification Certificate and before a subsequent review by the Verification Agency.
- 9.4 Affected Decision-Makers are strongly encouraged to be observant of Fronting Risks and to report any observed Fronting practices to the minister.

## **10 GUIDELINES FOR THE DETERMINATION AND EVALUATION OF FRONTING RISK**

- 10.1 When Verification Agencies identify an Enterprise which misrepresents its BEE Status, the Verification Agency must inform the Enterprise of its findings. If the Fronting Practice does not cease within 14 days of the report, the Verification Agency must report to the minister.
- 10.2 In order to minimise the instances of Fronting, this statement determines and measure the level of Fronting Risk associated with an Enterprise in accordance with paragraphs 10.1 to 10.4.
- 10.3 The Fronting Risk Indicators will allow Verification Agencies and Affected Decision-Makers

to classify Enterprises according to four different levels of Fronting status. Fronting risk can be calculated by means of the following formula:

$A = (B \times 3) + C$	
Where	
A is the Fronting score indicator representing the potential level of Fronting in an Enterprise	
B is the total number of high-risk indicators (as identified in paragraph 7.2) evidenced in an Enterprise	
C is the total number of moderate-risk indicators (as identified in paragraph 7.3) evidenced in an Enterprise	

10.4 Based on its Fronting score, an Enterprise can be classified in terms of its Fronting status:

Fronting Status	Fronting Score	Sanctions for Fronting practices	Reporting Requirements
10.4.1 Fraud	N/A (Evidenced by fraudulent misrepresentation of BEE Status)	The BEE Status of an Enterprise will not be recognised and all points will be forfeited	The Verification Agency will immediately inform the Enterprise, and report the entity to the minister if the situation is not resolved within 14 days
10.4.2 Excessive Fronting Risk	Fronting Score $\geq 10$	The BEE Recognition Level of an Enterprise will be decreased by one level for every five points (or part thereof) scored on the Fronting index. The Verification Certificate of an Enterprise will carry the notation: 'Excessive Fronting risk'.	The Verification Agency will immediately inform the Enterprise, and report the entity to the minister if situation not resolved within 14 days
10.4.3 High Fronting Risk	Fronting Score $\geq 5$ but Fronting Score $< 10$	The BEE contribution level of the Enterprise, will be decreased by one level. The Verification Certificate will carry the notation: 'high Fronting risk'	The Verification Agency will immediately inform the Enterprise
10.4.4 Low Fronting Risk	Fronting Score $< 5$	None	None

10.5 If found guilty of fraud or misrepresentation by a court of law, an Enterprise and its directors may be black-listed.

- 10.6 In cases in which high or excessive Fronting risks have been identified by Verification Agencies, it is incumbent upon the agencies to add a paragraph on the Verification Certificate which describes the Fronting risks.

1.27 "Verification Certificate" has the meaning assigned in Code 000 Statement 020.

## **2 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 2.1 provide guidance as to which Measured Entities are subject to measurement under the Codes;
- 2.2 provide guidance as to the consolidation of compliance data in certain specific instances;
- 2.3 provide guidance as to the attribution of compliance data in certain specific instances;
- 2.4 provide guidance as to the separation of compliance data in certain specific instances; and
- 2.5 provide clarity as to the transfer of certain BEE contributions in the event of a sale of business.

## **3 INTERPRETATION OF THIS STATEMENT**

- 3.1 When interpreting a provision of this statement, any reasonable interpretation that is consistent with the objectives of the Act must be preferred over any other interpretation that is inconsistent with such objectives.
- 3.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

## **4 APPLICATION OF THIS STATEMENT**

This statement applies to all Measured Entities subject to measurement under Codes 000 to 700, Code 800 and Codes 1000 to 1700.

## **5 MEASURED ENTITIES SUBJECT TO MEASUREMENT UNDER THE CODES**

- 5.1 In furtherance of the objectives of the Act, the following entities shall be subject to measurement in terms of the Codes:

- 5.1.1 all organs of state;

- 5.1.2 all public entities listed in schedule 2 of the Public Finance Management Act;
- 5.1.3 all public entities listed in schedule 3 part A and part C of the Public Finance Management Act;
- 5.1.4 any public entity listed in schedule 3 part B and part D which are trading entities and which undertake any business with any organ of state or public entity or with any Enterprises; and
- 5.1.5 any Enterprise which undertakes any business with any organ of state or public entity.
- 5.2 Any Enterprises undertaking any business with any other Measured Entity ("Client Measured Entity"), whether directly or indirectly, which is subject to measurement under the Codes in terms of paragraph 5.1, may be required to evidence its own level of compliance to the Client Measured Entity and, in such event, will be subject to measurement under the Codes.
- 5.3 A Measured Entity subject to measurement in terms of paragraphs 5.1 and 5.2 and which is not a Qualifying Small Enterprise or an Exempted Micro Enterprise will be measured in accordance with Codes 000 – 700.
- 5.4 A Measured Entity subject to measurement in terms of paragraphs 5.1 and 5.2 and which is a Qualifying Small Enterprise or an Exempted Micro Enterprise will be measured in accordance with Codes 1000 – 1700.

## 6 GENERAL VERIFICATION CERTIFICATE REQUIREMENTS

- 6.1 Organs of state and public entities listed in Schedule 1 of the Public Finance Management Act can rely upon a single Verification Certificate.
- 6.2 Public entities listed in Schedules 2 and 3 of the Public Finance Management Act as well as any Enterprise must obtain a Verification Certificate in respect of themselves and to the extent that any such entity may have a subsidiary, each such subsidiary must obtain its own Verification Certificate.
- 6.3 Related Enterprises which are:

- 6.3.1 not Exempted Micro Enterprises, shall each obtain their own Verification Certificate;
- 6.3.2 Exempted Micro Enterprises:
- 6.3.2.1 must, if the combined value of the turnover of each of the Related Enterprises is in excess of the level required to qualify as an Exempted Micro Enterprise, obtain either a Consolidated Verification Certificate or individual Verification Certificates for each Related Enterprise; and
- 6.3.2.2 If the combined value of the turnover of each of the Related Enterprises is not in excess of the level required to qualify as an Exempted Micro Enterprise, remain exempted from obtaining a Verification Certificate.
- 6.4 If a Measured Entity undertakes its business within a sector in respect of which a Sector Code (as provided for in Code 000 Statement 010) has been gazetted, it shall be measured in accordance with that Sector Code, save to the extent that the Sector Code is silent as to any of the issues dealt within Codes 000 – 700 or Codes 1000 – 1700 (as the case may be).
- 6.5 A Measured Entity that is governed by a Sector Code shall not be entitled to apply that Sector Code to its suppliers or enterprise development recipients unless those Measured Entities are also subject to that Sector Code.

## **7 SPECIFIC VERIFICATION CERTIFICATES REQUIREMENTS FOR COMPLEX STRUCTURES**

- 7.1 A Measured Entity that undertakes its business in more than one sector shall be entitled to obtain a Separated Verification Certificate for each of its trading business or operational units, provided that such of its business or operational units that are not subject to a Sector Code shall be measured in accordance with Codes 100 – 700 or Codes 1000 – 1700 (as the case may be).
- 7.2 Group Structures and Franchising Arrangements may, subject to the provisions of paragraph 10, qualify for the attribution of compliance data.
- 7.3 Divisional Structures may, subject to the provisions of paragraph 9, obtain one or

more Separated Verification Certificates for their trading divisions.

- 7.4 Any Unincorporated Joint Venture is required to prepare a Consolidated Verification Certificate.

## 8 CONSOLIDATED VERIFICATION CERTIFICATES

- 8.1 Measured Entities entitled to obtain a Consolidated Verification Certificate in terms of paragraphs 6.3 or 7.4 shall be entitled to consolidate all of their compliance data in respect of each of the Elements of BEE on a single Verification Certificate as if those Measured Entities were a single Measured Entity.
- 8.2 The consolidation of the compliance data shall be undertaken in accordance with Acceptable Valuation Standards.
- 8.3 A Consolidated Verification Certificate shall clearly state upon it:
- 8.3.1 the details of the each of the Measured Entities in respect of which it is prepared; and
- 8.3.2 the fact that it is a Consolidated Verification Certificate.
- 8.4 Nothing in this statement precludes a Verification Agency from preparing a statement consolidating the BEE compliance data of all Measured Entities in a Group Structure, in a Divisional Structure, in a Franchising Arrangement or in a group of Related Enterprises for research and reporting purposes, save that such statement of consolidation shall never constitute a Verification Certificate and shall not contain the words "Verification Certificate" on it.

## 9 SEPARATED VERIFICATION CERTIFICATES

- 9.1 In circumstances where a Separated Verification Certificate may be issued in accordance with paragraphs 7.1 and 7.3:
- 9.1.1 the ownership Element of BEE shall measured at the level of the Measured Entity itself;
- 9.1.2 those aspects of the management control Element of BEE that relate to:



- 9.1.2.1 membership of the Board of the Measured Entity shall be measured at the level of the Measured Entity itself; and
- 9.1.2.2 membership of Top Management shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared;
- 9.1.3 the employment equity Element of BEE shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared;
- 9.1.4 the skills development Element of BEE shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared unless that Measured Entity undertakes any of those functions on a centralised basis in which event the provisions of paragraph 10 will apply to any such centralised functions;
- 9.1.5 the preferential procurement Element of BEE shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared unless that Measured Entity undertakes any of those functions on a centralised basis in which event the provisions of paragraph 10 will apply to any such centralised functions;
- 9.1.6 the enterprise development Element of BEE shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared unless that Measured Entity undertakes any of those functions on a centralised basis in which event the provisions of paragraph 10 will apply to any such centralised functions;
- 9.1.7 the residual Element of BEE shall be measured at the level of the business/operational unit in respect of which the Separated Verification Certificate is prepared unless that Measured Entity undertakes any of those functions on a centralised basis in which event the provisions of paragraph 10 will apply to any such centralised functions;
- 9.2 A Separated Verification Certificate shall clearly state upon it:

- 9.2.1 the details of the Measured Entity;
- 9.2.2 the details of business/operational unit in respect of which it is prepared; and
- 9.2.3 the fact that it is a Separated Verification Certificate.

## 10 ATTRIBUTION OF COMPLIANCE DATA

10.1 Where subsidiaries in a Group Structure are entitled to do so in accordance with paragraph 7.2, they shall be entitled to recognise such portion of the following Element BEE compliance data of their holding company or of a co-subsiary as may be attributable to them, together with their own corresponding data, on their own Verification Certificate, provided that such data is apportioned and attributed between the holding company/co-subsiary and the subsidiary using an Acceptable Valuation Standard:

- 10.1.1 the training aspects of the skills development Element data (other than in respect of learnerships) where the holding company or co-subsiary is responsible for the implementation of some of the functions associated with that Element and the subsidiary makes a monetary contribution to the costs of the performance of that function by the holding company/co-subsiary;
- 10.1.2 preferential procurement Element data where the holding company or co-subsiary is responsible for centralised procurement of specific items on behalf of all Measured Entities in the Group Structure and does not trade outside of the Group Structure. Notwithstanding the foregoing, any margins or service or related fees charged by a holding company or the co-subsiary shall be included within the total procurement spend of the subsidiary procuring from it and will be measured on the basis of the BEE Status of that holding company or co-subsiary;
- 10.1.3 enterprise development Element data where the holding company or co-subsiary is responsible for undertaking some enterprise development functions for all Measured Entities in the Group Structure; and
- 10.1.4 residual Element data where the holding company or co-subsiary is responsible for some residual functions for all Measured Entities in the Group Structure.

10.2 Franchisees in a Franchising Arrangement are entitled to recognise:

10.2.1 as a contribution to their own compliance data, any quantified and expressly stated portion of any franchise or related fee payable to the Franchisor that is to be applied by the Franchisor in:

10.2.1.1 providing training to the employees of the Franchisees or paying for learnerships in the Franchisee if such contributions qualify for recognition as a skills development Element contribution;

10.2.1.2 making of enterprise development Element contributions on behalf of the Franchisee; and

10.2.1.3 making of residual Element contributions on behalf of the Franchisee; and

10.2.2 as preferential procurement contributions of the Franchisee in their own compliance data, such portions of the preferential procurement element data attained by the Franchisor as may be attributable to the Franchisee if the Franchisor undertakes some procurement on behalf of its Franchisees or the Franchisor appoints some of the Franchisee's suppliers, provided that such data is apportioned between the Franchisor and the Franchisee using an Acceptable Valuation Standard. Any margins or service or related fees charged by a Franchisor shall however be included within the total procurement spend of the Franchisee procuring from it and will be measured on the basis of the BEE Status of the Franchisor.

10.3 Where in paragraph 9, provision is made for attribution in terms of this clause 10, the provisions of paragraph 10.1 will apply *mutatis mutandis* to such provisions.

10.4 Where an attribution of compliance data as contemplated in this paragraph 10 has been undertaken, the resulting Verification Certificate shall state upon it:

10.4.1 that such attribution has been undertaken; and

10.4.2 identify the Element scores which have included an attributed data.

## 11 TRANSFER OF BEE COMPLIANCE DATA

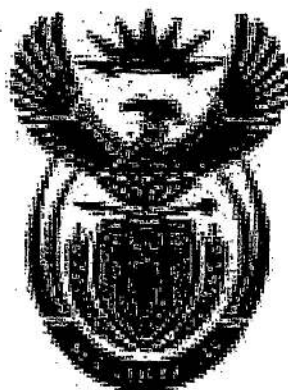
11.1 To the extent that any Measured Entity has undertaken any initiatives which attribute BEE

compliance data based upon:

- 11.1.1 cumulative enterprise development Element contributions;
- 11.1.2 cumulative residual Element contributions; or
- 11.1.3 historical contributions arising from Code 100 Statement 101,

then, in such instance, those contributions will be considered to attach to the business of the Measured Entity for that portion of full value of the contribution as is represented by the value that the portion of the underlying business of the Measured Entity sold to another entity holds to the pre-sale value of the Measured Entity (all measured using an Acceptable Valuation Standard), where that Measured Entity subsequently enters into any bona fide transaction whereby all or a portion of the underlying business of the Measured Entity is sold to another entity.

- 11.2 Where the value of contributions as contemplated in paragraph 11.1 are transferred as provided for in that clause, the seller Measured Entity will only be entitled retain recognition for that the balance of the value of such contribution following the sale.
- 11.3 The BEE compliance scores resulting from transferred contribution as contemplated in this paragraph 11 must recalculated on the basis set forth in Code 100 Statement 101, Code 600 and Code 700 following sale, it being specifically recorded that the contributions and not their resulting BEE compliance scores are transferred.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

### STATEMENT 102: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS ARISING FROM INVESTMENTS BY BEE TARGETED WAREHOUSING FUNDS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	2
3 Application of this Statement.....	2
4 Objectives of this Statement .....	3
5 Key Measurement Principles .....	3
6 Composition of a Warehousing Fund .....	3
7 Measurement of Exercisable Voting Rights held by a Warehousing Fund.....	5
8 Measurement of Economic Interest held by a Warehousing Fund.....	5

#### 1 DEFINITIONS

In this statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "BEE" means broad-based black economic empowerment;
- 1.2 "black designated groups" has the meaning defined in Statement 100;
- 1.3 "black people" has the meaning defined in Code 000 Statement 000;
- 1.4 "Broad-Based Ownership Scheme" has the meaning defined in Statement 100;
- 1.5 "Economic Interest" has the meaning defined in Statement 100;
- 1.6 "Element" has meaning defined in Code 000 Statement 000;
- 1.7 "Enterprise" has the meaning defined in Statement 100;

- 1.8 "Equity Interest" has the meaning defined in Statement 100;
- 1.9 "Exercisable Voting Right" has the meaning defined in Statement 100;
- 1.10 "Intended Black Participants" means the black Participants to whom the Warehousing Fund intends transferring an Equity Interest held by it at the end of the warehousing period and with whom the Warehousing Fund and the Enterprise in which such Equity Interest is held have concluded a tripartite agreement regulating the terms of the warehousing arrangement and the price ultimately payable by the Intended Black Participants for such Equity Interest;
- 1.11 "Net Equity Interest" has the meaning defined in Statement 100;
- 1.12 "Ownership Fulfilment" has the meaning defined in Statement 100;
- 1.13 "Ownership Scorecard" has the meaning defined in Statement 100;
- 1.14 "Participant" has the meaning defined in Statement 100;
- 1.15 "Realisation Points" has the meaning defined in Statement 100;
- 1.16 "Statement 100" means Code 100 Statement 100;
- 1.17 "the Act" means the Broad-Based Black Economic Empowerment Act of 2003, as amended or substituted;
- 1.18 "the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act;
- 1.19 "the Generic Scorecard" means the balanced BEE scorecard included in Code 000 Statement 000;
- 1.20 "Warehousing Fund" means a fund meeting the requirements in paragraph 6 below; and
- 1.21 "Weighting" bears the same meaning as assigned in Code 000, Statement 000.

## **2 INTERPRETATION OF THIS STATEMENT**

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## **3 APPLICATION OF THIS STATEMENT**

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of Warehousing Funds.



#### **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 specify the key measurement principles associated with ownership by and contributions to Warehousing Funds;
- 4.2 specify the requirements for recognition of Warehousing Funds;
- 4.3 specify the manner of measurement of Exercisable Voting Rights to which Warehousing Funds are entitled;
- 4.4 specify the manner of measurement of Economic Interest to which Warehousing Funds are entitled; and
- 4.5 specify the manner of measurement of Net Equity Interest in the context of ownership of Equity Interest by Warehousing Funds.

#### **5 KEY MEASUREMENT PRINCIPLES**

An Enterprise may be awarded points in its Ownership Scorecard for the notional participation of black people in the Economic Interest and/or Exercisable Voting Rights of that Enterprise, arising from the ownership of an Equity Interest in that Enterprise by a Warehousing Fund.

#### **6 COMPOSITION OF A WAREHOUSING FUND**

- 6.1 A Warehousing Fund is a fund:
  - 6.1.1 established by an Enterprise or by an organ of state or public entity for the specific purpose of holding an Equity Interest in another Enterprise purchased from exiting black Participants for a fixed duration with the obligation to ultimately transferring that Equity Interest into the ownership of the Intended Black Participants; and
  - 6.1.2 approved by the minister by notice in gazette.
- 6.2 In addition to the requirements of paragraph 6.1, any Warehousing Fund must conform to the following requirements:
  - 6.2.1 the constitutional documents of the fund must be so constituted as to ensure that the Warehousing Fund's objectives are aligned in all material respects to the Codes;
  - 6.2.2 the governance structures of the Warehousing Fund should be substantially aligned to those governing the National Empowerment Fund as set out in that funds enabling Act, being the National Empowerment Fund Act of 1998; and

6.2.3 the maximum duration of the holding of an Equity Interest by the Warehousing Fund must not exceed 3 years.

6.3 In addition to the requirements of paragraphs 6.1 and 6.2, the remaining capital invested in any Warehousing Fund, after settling any indebtedness to contributors, must, upon winding up or termination of the fund, be transferred to a Broad-Based Ownership Scheme(s) such that:

6.3.1 100% of the value of such contributions and Contribution Growth are distributed to or applied to the benefit of black people;

6.3.2 at least 40% of the value of such contributions and Contribution Growth are distributed to or applied to the benefit of black women; and

6.3.3 at least 10% of the value of such contributions and Contribution Growth are distributed to or applied to the benefit of black designated group,

provided that such Broad-Based Ownership Scheme shall not be a connected person of the administrators of the Warehousing Fund or any of its contributors. For the purposes of this paragraph, the term "connected person" shall have the meaning assigned in the Income Tax Act of 1962.

6.4 In granting his/her approval, the minister shall be entitled to specify such parameters relating to such approval as may relate to such matters as:

6.4.1 the maximum rate of return on a recoverable contribution made to a Warehousing Fund by a contributor; and

6.4.2 the terms relating to the mechanisms for disposal of any investment by the Warehousing Fund in the event of the failure the tripartite agreement referred to in clause 1.10.

6.5 The minister may revoke an approval as referred to in paragraph 6.1.2 at any time on good cause shown, whereupon all recognition under this statement shall no longer apply.

6.6 Organs of state, public entities and Enterprises can qualify for recognition of enterprise development contributions to black economic empowerment under Code 600 Statement 600 through the making of recoverable and non-recoverable contributions to the funding of a Warehousing Fund.

## **7 MEASUREMENT OF EXERCISABLE VOTING RIGHTS HELD BY A WAREHOUSING FUND**

- 7.1 Provided that a Warehousing Fund meets all of the applicable requirements set forth in paragraph 6, an Enterprise in which it owns an Equity Interest will be entitled to claim points on its Ownership Scorecard for Exercisable Voting Rights, equivalent in number to those held by the Warehousing Fund, held by notional black Participants such that:
- 7.1.1 100% of those notional black Participants are black people;
  - 7.1.2 40% of those notional black Participants are black women; and
  - 7.1.3 10% of those notional black Participants are members of black designated groups.
- 7.2 Notwithstanding the provisions of paragraph 7.1, no such Exercisable Voting Rights shall be recognisable unless the Warehousing Fund, the Enterprise in which the Warehousing Fund holds an Equity Interest, and the Intended Black Participants, have concluded a tripartite agreement in terms of which those Exercisable Voting Rights are irrevocably transferred to those Intended Black Participants for the duration of the warehousing period.

## **8 MEASUREMENT OF ECONOMIC INTEREST HELD BY A WAREHOUSING FUND**

- 8.1 Provided that a Warehousing Fund meets all of the applicable requirements set forth in paragraph 6, an Enterprise in which it owns an Equity Interest will be entitled to claim points on its Ownership Scorecard for Economic Interest held by notional black Participants.
- 8.2 The calculation of the Economic Interest held by such notional black Participants shall be measured on the basis that the percentage of Economic Interest received by the Warehousing Fund, that is applied by that Warehousing Fund to reducing the cost to the Intended Black Participants of acquiring the Equity Interest from the Warehousing Fund at the end of the warehousing period, multiplied by the percentage of Economic Interest to which the Warehousing Fund is entitled, shall be deemed to Economic Interest in the Enterprise to which notional black Participants are entitled such that:
- 8.2.1 100% of those notional black Participants are black people;
  - 8.2.2 40% of those notional black Participants are black women; and
  - 8.2.3 10% of those notional black Participants are members of black designated groups.

- 8.3 The calculation of Net Equity Interest for such notional black Participants shall be based upon the result of the calculation in paragraph 8.2.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

### STATEMENT 103: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY MULTINATIONAL COMPANIES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	3
3 Application of this Statement .....	4
4 Objectives of this Statement .....	4
5 Key Measurement Principles .....	4
6 Recognition of Equity Equivalents.....	5
7 Sale of Offshore Equity Interests .....	6
8 Sale of South African Businesses or Assets by Multinational Businesses or South African Multinationals.....	7

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

1.1 "Acceptable Valuation Standard" means a valuation of:

- 1.1.1 an asset;
- 1.1.2 an Economic Interest;
- 1.1.3 a Local Multinational Enterprise; or
- 1.1.4 any other instrument or right which is relevant to measurement under this statement,

undertaken in accordance with normal valuation methods that represent standard market practice;

- 1.2 "BEE" means black economic empowerment;
- 1.3 "black people" shall have the meaning defined in Code 000 Statement 000;
- 1.4 "Economic Interest" shall have the meaning defined in Statement 100;
- 1.5 "Enterprise" shall have the meaning defined in Statement 100;
- 1.6 "Equity Equivalent" means an equity equivalent contribution made by a Local Multinational Enterprise of a Multinational Business in terms of an approved:
  - 1.6.1 public program or scheme of any government department, provincial government or local government in the Republic of South Africa which has been approved by the minister as entitling that Local Multinational Enterprise to indicative points under the Ownership Scorecard; or
  - 1.6.2 provided for in terms of a Sector Code gazetted in terms section 9 of the Act and Code 000 Statement 010 of the Codes;
- 1.7 "Equity Interest" shall have the meaning defined in Statement 100;
- 1.8 "Exercisable Voting Rights" shall have the meaning defined in Statement 100;
- 1.9 "Global Policy" means a globally and uniformly applied restriction upon the alienation of Equity in or the sale of businesses of the Multinational Affiliates of a Multinational Business imposed by that Multinational Business or by a regulator which has lawful jurisdiction over that Multinational Business or by any law of application to the Multinational Business. Where the Global Policy is imposed by a regulator or by law, such Global Policy must substantially have been in existence prior to the date of promulgation of the Act;
- 1.10 "Local Multinational Enterprise" means a South African based Enterprise which is a Multinational Affiliate of a Multinational Business or of a South African Multinational, it being recorded that a branch of an external company as defined in the Companies Act of 1973 shall constitute a Local Multinational Enterprise;
- 1.11 "Multinational Affiliate" means a business owned or controlled by a Multinational Business or a South African Multinational which operates in a particular country or in a particular region other than the country and/or region in which that Multinational Business



or South African Multinational maintains its headquarters;

- 1.12 **"Multinational Business"** means a business having its international headquarters in a jurisdiction other than the Republic of South Africa and which owns and/or controls a Local Multinational Enterprise as one of its Multinational Affiliates, provided that a Multinational Business as herein defined shall not include a South African Multinational;
- 1.13 **"Net Equity Interest"** shall have the meaning defined in Statement 100;
- 1.14 **"Ownership Bonus Points"** refer to the points specified in paragraph 5.4 of the Ownership Scorecard;
- 1.15 **"Ownership Fulfilment"** shall have the meaning defined in Statement 100;
- 1.16 **"Ownership Scorecard"** means the scorecard used for the measurement of ownership Statement 100;
- 1.17 **"Participant"** shall have the meaning defined in Statement 100;
- 1.18 **"South African Multinational"** means any Enterprise which:
- 1.18.1 currently maintains its international headquarters in the Republic of South Africa and which maintains Multinational Affiliates in other jurisdictions; or
- 1.18.2 previously maintained its international headquarters in the Republic of South Africa and having moved those headquarters to another jurisdiction, now maintains a Local Multinational Enterprise in the Republic of South Africa as one of its Multinational Affiliates;
- 1.19 **"Statement 100"** means Code 100 Statement 100 issued in terms of section 9 of the Act;
- 1.20 **"Statement 101"** means Code 100 Statement 101 issued in terms of section 9 of the Act;
- 1.21 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003; and
- 1.22 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

### 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of Multinational Businesses and South African Multinationals.

### 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 4.1 define the key measurement principles applicable to measurement of ownership contributions by Local Multinational Enterprises of Multinational Businesses and South African Multinationals;
- 4.2 provide for the recognition of Equity Equivalent contributions made by Multinational Businesses;
- 4.3 provide for the recognition of ownership contributions arising from sales of offshore Equity Interests;
- 4.4 provide for the recognition of ownership contributions arising from sales of businesses or assets by the Local Multinational Enterprises of Multinational Businesses or South African Multinationals; and
- 4.5 specify the approach to measurement of ownership contributions made by South African Multinationals.

### 5 KEY MEASUREMENT PRINCIPLES

- 5.1 It is a fundamental principle of this statement that any contributions towards the ownership *Element of broad-based black economic empowerment made by Multinational Businesses* or South African Multinationals should be measured:
  - 5.1.1 against the value (measured using an Acceptable Valuation Standard) of the Local Multinational Enterprise of a Multinational Business or of a South African Multinational; or
  - 5.1.2 against the value (measured using an Acceptable Valuation Standard) of the South African operations of a South African Multinational maintaining its headquarters in the Republic of South Africa.
- 5.2 Contributions made by South African Multinationals maintaining a Local Multinational

Enterprise as one of their Multinational Affiliates and those made by Multinational Businesses which represent in value a specific percentage of the value of the Local Multinational Enterprise of such South African Multinationals or Multinational Businesses, will qualify for recognition under the Ownership Scorecard as notional ownership by black people of that Local Multinational Enterprise at an equivalent percentage.

- 5.3 Contributions made by South African Multinationals maintaining their international headquarters in the Republic of South Africa which represent in value a specific percentage of the value of their South African operations will qualify for recognition under the Ownership Scorecard as ownership by black people of that South African Multinational at an equivalent percentage.

## 6 RECOGNITION OF EQUITY EQUIVALENTS

- 6.1 The provisions of Statement 100 apply unchanged to the measurement of the ownership Element of broad-based black economic empowerment in respect of Local Multinational Enterprises. Local Multinational Enterprises will have to evidence the following requirements in order to qualify for equity equivalents:
- 6.1.1 the Multinational Business must own and control the entire Equity in the Local Multinational Enterprise;
- 6.1.2 the Multinational Business must be subject to a Global Policy; and
- 6.1.3 the Multinational Business will suffer substantial commercial harm if it were to implement transactions designed to give effect to the provisions of Statement 100.
- 6.2 The minister may from time to time, and in consultation with the sectoral line minister(s), premiers or other stakeholders in any government department, provincial government or local government approve certain specified public programs or schemes as entitling Local Multinational Enterprises of Multinational Businesses to Equity Equivalents. This recognition does not apply to any South African Multinationals.
- 6.3 To the extent that a Local Multinational Enterprise is entitled to receive indicative points on the Ownership Scorecard in accordance with an Equity Equivalent, those points shall be included in that Local Multinational Enterprise's Ownership Scorecard.
- 6.4 Any Local Multinational Enterprise shall be entitled, at any time, to make written representations to the minister for the recognition of Equity Equivalents.

- 6.5 The content of Equity Equivalents approved in accordance with a Sector Code as contemplated in Code 000 Statement 010 will be dealt with in such Sector Code.

## 7 SALE OF OFFSHORE EQUITY INTERESTS

- 7.1 Any South African Multinational maintaining its international headquarters outside of the Republic of South African and any Multinational Business shall be entitled to receive recognition for the sale of an Equity Interest to black Participants in:

- 7.1.1 any company interposed between the Local Multinational Enterprise and its ultimate holding company; or
- 7.1.2 its ultimate holding company

- 7.2 In order to facilitate the provisions of paragraph 7.1, a Local Multinational Enterprise shall be entitled to claim points in its Ownership Scorecard on the basis of notional participation by black Participants in that Local Multinational Enterprise based upon the sale of offshore Equity Interest as follows:

- 7.2.1 Economic Interest to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;
- 7.2.2 Exercisable Voting Rights to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;
- 7.2.3 Net Equity Interest and Ownership Fulfilment points arising from a sale of offshore Equity Interests shall be measured in compliance with the principles established in Statement 100, save that wherever reference is made to the measurement of the value of the "Measured Enterprise", that reference will be interpreted as relating to the value of the Local Multinational Enterprise; and
- 7.2.4 Ownership Bonus Points will be measured on the same basis as specified in Statement 100 as modified by reference to paragraph 7.2.1 above in respect of the measurement of Economic Interest.

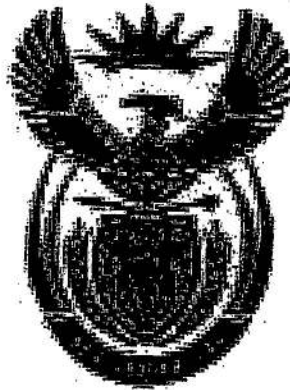
7.3 Notwithstanding the provisions of paragraph 7.2, no points shall be claimable by the Local Multinational Enterprise under the Ownership Scorecard in respect of:

7.3.1 Exercisable Voting Rights arising from the sale of offshore Equity Interest unless the Exercisable Voting Rights in the Local Multinational Enterprise are irrevocably transferred to the black people owning that offshore Equity Interest for the continued duration of their ownership of that offshore Equity Interest; and

7.3.2 Economic Interest (including also derived points in respect of Net Equity Interest and Ownership Bonus Points) arising from the sale of offshore Equity Interest unless the black people owning that offshore Equity Interest are entitled to receive Economic Interest arising from offshore Equity Interest which are equivalent to or greater than those which would arise from an entitlement to share in the profitability of the Local Multinational Enterprise.

## **8 SALE OF SOUTH AFRICAN BUSINESSES OR ASSETS BY MULTINATIONAL BUSINESSES OR SOUTH AFRICAN MULTINATIONALS**

8.1 Any sale of any South African business or asset by a Multinational Business/ South African Multinational or its Local Multinational Enterprise (where applicable) shall be fully recognisable under Statement 101, save that any reference to the measurement of the value of the "Measured Enterprise" in Statement 101, shall for this purposes of this statement be interpreted as relating to the value of the Local Multinational Enterprise.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.



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

### STATEMENT 104: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY PUBLIC ENTITIES AND ORGANS OF STATE

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions .....	1
2 Interpretation of this Statement .....	2
3 Application of this Statement .....	2
4 Objectives of this Statement .....	2
5 Introduction .....	2
6 Indicative Ownership Scores for Public entities and Organs of State .....	3
7 Recognition of Ownership by Designated Public Entities .....	3

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "BEE" means black economic empowerment;
- 1.2 "black designated groups" has the meaning defined in Statement 100;
- 1.3 "black people" has the meaning defined in Code 000 Statement 000;
- 1.4 "Designated Public Entities" means the public entities referred to in paragraph 7;
- 1.5 "Economic Interest" has the meaning defined in Statement 100;
- 1.6 "Equity Interest" has the meaning defined in Statement 100;
- 1.7 "Exercisable Voting Rights" has the meaning defined in Statement 100;
- 1.8 "Generic Scorecard" has the meaning defined in Code 000 Statement 000;



- 1.9 "Ownership Bonus Points" refer to the points specified in paragraph 5.4 of the Ownership Scorecard;
- 1.10 "Realisation Points" has the meaning defined in Statement 100;
- 1.11 "Statement 100" means Code 100, Statement 100 issued in terms of section 9 of the Act;
- 1.12 "Statement 101" means Code 100, Statement 101 issued in terms of section 9 of the Act;
- 1.13 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.14 "the Codes" means all Codes of Good Practice issues in terms of section 9 of the Act, including without limitation, this Statement; and
- 1.15 "the Ownership Scorecard" means the scorecard used for the measurement of ownership Code 100, Statement 100.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of public entities and organs of state.

## 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 4.1 specify the basis for the award of indicative points for the ownership Element of the broad-based black economic empowerment in respect of public entities wholly owned by organs of state (other than Designated Public Entities) and in respect of organs of state; and
- 4.2 specify the basis for recognition of ownership of Equity Interests held by Designated Public Entities as being black ownership.

## 5 INTRODUCTION

- 5.1 Public entities (other than Designated Public Entities) wholly owned by organs of state and organs of state themselves that are subject to measurement under the Codes are incapable of being measured under Statement 100 since ownership by organs of state is expressly excluded from measurement under that statement. Accordingly, such entities

must be assigned an indicative score for ownership in order to complete their Generic Scorecard.

5.2 In certain exceptional circumstances, particular Designated Public Entities may be:

- 5.2.1 established with the specific objective of furthering the objectives of the Act and/or of broad-based economic empowerment in general; and
- 5.2.2 allocated Equity Interests in private sector enterprises emerging from the sales of state owned assets or the licensing of new enterprises with a view to holding such Equity Interests in support of the objectives contained in the Act.

As such, these Designated Public Entities may enjoy a special status for the purposes of the Codes in that, notwithstanding the fact that they may be wholly owned by organs of state, they may be deemed to be black owned for the purposes of measurement under Statements 100 and 101.

## 6 INDICATIVE OWNERSHIP SCORES FOR PUBLIC ENTITIES AND ORGANS OF STATE

As public entities wholly owned by organs of state (other than Designated Public Entities) and organs of state cannot be measured as having any black ownership in terms of Statement 100, the following formula is provided in order to allow such entities to be awarded an indicative score for the ownership element:

$$A = \frac{B}{80} \times 20$$

Where

*A* is the score for the ownership Element any entity measured in terms of this statement

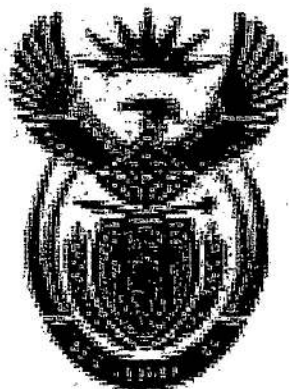
*B* is the score achieved by that entity on the remainder of the Generic Scorecard other than the ownership Element.

## 7 RECOGNITION OF OWNERSHIP BY DESIGNATED PUBLIC ENTITIES

- 7.1 The minister may from time to time by notice in the gazette, designate certain public entities as Designated Public Entities and may, in so doing, stipulate the parameters of the entitlement of those Designated Public Entities to benefit from the provisions of this paragraph 7.
- 7.2 Ownership of an Equity Interest by a Designated Public Entity which conforms to the parameters specified by the minister as contemplated in paragraph 7.1, must, for the

purposes of measurement under Statements 100 and 101, be regarded as ownership by notional black people holding an entitlement to:

- 7.2.1 the percentage of Economic Interest and the percentage Exercisable Voting Rights attached to the Designated Public Entity owned Equity Interest in the following proportions:
  - 7.2.1.1 100% owned by black people;
  - 7.2.1.2 40% owned by black women; and
  - 7.2.1.3 10% owned by black designated groups;
- 7.2.2 fully paid-up and unrestricted ownership of the all Economic Interest attached to the Designated Public Entity owned Equity Interest such that all Realisation Points are awarded pro rata to the percentage of Economic Interest attached to that Equity Interest; and
- 7.2.3 such Ownership Bonus Points as are pro rata to the percentage of Economic Interest attached to that Equity Interest.
- 7.3 The provisions of this paragraph 7 will cease to apply when the Designated Public Entity alienates the Equity Interest or if the minister revokes the status conferred in terms of paragraph 7.1.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

### STATEMENT 105: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY COMPANIES LIMITED BY GUARANTEE AND SECTION 21 COMPANIES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	2
3 Application of this Statement.....	2
4 Objectives of this Statement .....	2
5 Indicative Ownership Score .....	2

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "BEE" means black economic empowerment;
- 1.2 "company limited by guarantee" means a company as referred to in section 19(1)(b) of the Companies Act;
- 1.3 "Companies Act" means the Companies Act of 1973, as amended or substituted;
- 1.4 "section 21 company" means an association not for gain incorporated under section 21 of the Companies Act and which, in accordance with the provisions of section 21(1) of the Companies Act, is incorporated as a company limited by guarantee;
- 1.5 "Statement 100" means Code 100, Statement 100 issued in terms of section 9 of the Act;
- 1.6 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003; and
- 1.7 "the Codes" means all Codes of Good Practice issues in terms of section 9 of the Act, including without limitation, this Statement.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of companies limited by guarantee and section 21 companies.

## 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to specify the basis for the award of indicative points for the ownership Element of the broad-based black economic empowerment in respect of companies limited by guarantee and section 21 companies.

## 5 INDICATIVE OWNERSHIP SCORE

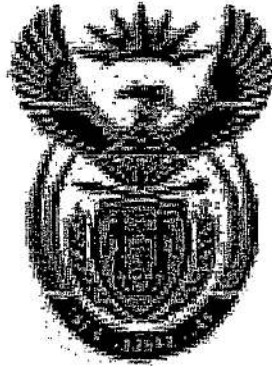
As companies limited by guarantee and section 21 companies cannot be measured as having any black ownership in terms of Statement 100, the following formula is provided in order to allow such entities to be awarded an indicative score for the ownership Element:

$$A = \frac{B}{80} \times 20$$

Where

**A** is the score for the ownership Element any entity measured in terms of this statement

**B** is the score achieved by that entity on the remainder of the Generic Scorecard other than the ownership Element.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.



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

### STATEMENT 300: THE RECOGNITION OF EMPLOYMENT EQUITY CONTRIBUTIONS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions .....	1
2 Interpretation of this statement.....	2
3 Application of this statement .....	2
4 Objectives of this statement.....	2
5 Employment Equity scorecard .....	3
6 Key measurement principles.....	4
7 Measurement of the employment equity criteria.....	4

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Act" means the Broad Based Black Economic Empowerment Act, Act 53 of 2003;
- 1.2 "black people with disabilities" shall have the same meaning as defined in Code 100 Statement 100;
- 1.3 "Element" shall have the same meaning as defined in Code 000 Statement 000;
- 1.4 "employee" bears the meaning as defined in the Employment Equity Act;
- 1.5 "Enterprise" shall have the same meaning as defined in Code 100 Statement 100;
- 1.6 "Measured Entity" means an Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.7 "Occupational Levels" are as outlined in the EEA9 form issued as a regulation under the

Employment Equity Act. For ease of reference, the Occupational Levels relevant to this statement are those specified below and exclude any of the other Occupational Levels specified in EEA9:

- 1.7.1 "Senior Management" as per the EEA9 Form issued as a regulation under the Employment Equity Act;
- 1.7.2 "Professionally Qualified, Experienced Specialists and Mid-management" as per the EEA9 Form issued as a regulation under the Employment Equity Act; and
- 1.7.3 "Skilled Technical and Academically Qualified Workers, Junior management, Supervisors, Foremen, Superintendent" as per the EEA9 Form issued as a regulation under the Employment Equity Act;
- 1.8 "the Employment Equity Act" means the Employment Equity Act of 1998; and
- 1.9 "the Employment Equity Scorecard" means the scorecard used for the measurement of employment equity contributions in this statement.

## 2 INTERPRETATION OF THIS STATEMENT

- 2.1 When interpreting a provision of this statement, any reasonable interpretation that is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation that is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

## 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the employment equity Element of broad-based black economic empowerment in respect of all Measured Entities.

## 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are as to:

- 4.1 specify the scorecard for the measurement of the employment equity contributions to BEE;
- 4.2 define the key measurement principles for the measurement of the employment equity contributions to BEE; and

4.3 define the formula for the calculation of the score for employment equity.

## 5 EMPLOYMENT EQUITY SCORECARD

5.1 The following table represents the criteria used for the purposes of deriving a score for employment equity in terms of this statement:

Criteria	Weighting points	Compliance targets
5.1.1 Black people with disabilities employed by the Measured Entity as a percentage of all full-time employees	2	4%
5.1.2 Black people employed by the Measured Entity at Senior Management level as a percentage of employees at Senior Management level	2	60%
5.1.3 Black women employed by the Measured Entity at Senior Management level as a percentage of employees at Senior Management level	2	30%
5.1.4 Black people employed by the Measured Entity at Professionally Qualified, Experienced Specialists and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialists and Mid-management level	2	75%
5.1.5 Black women employed by the Measured Entity at Professionally Qualified, Experienced Specialists and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialists and Mid-management level	1	40%
5.1.6 Black people employed by the Measured Entity at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents as a percentage of employees at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents level	1	80%

5.2 Where a Measured Entity attains a score in respect of any one of the criteria specified in the employment equity scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting

points.

## 6 KEY MEASUREMENT PRINCIPLES

6.1 In measuring any of the criteria in the Employment Equity scorecard, the principles contained in the Employment Equity Act will apply and any reporting to the Department of Labour may be used as a basis for the purpose of reporting in terms of this statement. Data and facts may however be collated afresh for BEE planning and verification purposes. For the purposes of measurement and reporting:

6.1.1 the percentage of black people at each of the Occupation Levels relevant to the Employment Equity scorecard as well as the percentage of black people with disabilities may be based upon the applicable statistics contained in the Measured Entity's EEA9 and EEA10 forms as contemplated in the Employment Equity Act or may be collated in accordance with the guidelines set out in those forms; and

6.1.2 claims in respect of black people with disabilities may be supported by a duly completed declaration as contemplated in the Measured Entity's EEA1 form as contemplated in the Employment Equity Act.

6.2 Notwithstanding the foregoing, any Measured Entity not subject to the applicable provisions of the Employment Equity Act shall be required to compile the statistics contemplated in the Employment Equity scorecard using the guidelines set out in the Employment Equity Act for the purposes of this statement.

## 7 MEASUREMENT OF THE EMPLOYMENT EQUITY CRITERIA

The different indicators of employment equity in the scorecard are calculated on the following basis:

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

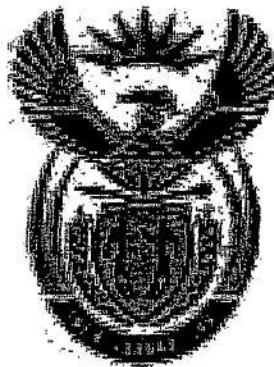
Where

*A* is the score achieved in respect of any given criteria as referred to paragraphs 5.1.1 to 5.1.6.

*B* is the percentage of category of black people being measured

*C* is the percentage compliance target in respect of that criteria

*D* is the weighting points allocated to the applicable criteria being measured.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

### STATEMENT 400: THE RECOGNITION OF SKILLS DEVELOPMENT AND ORGANISATIONAL TRANSFORMATION CONTRIBUTIONS TO BLACK ECONOMIC EMPOWERMENT

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this statement.....	3
3 Application of this statement.....	4
4 Objectives of this statement.....	4
5 The Skills Development Scorecard .....	4
6 Quantifiable Skills Development Spend .....	6
7 Key measurement principles.....	6
8 Measurement of skills development indicators.....	7

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "ABET" refers to adult basic education and training as determined by the National Qualifications Authority in accordance with Success Indicator 2.7 of the National Skills Development Strategy;
- 1.2 "black people with disabilities" shall have the same meaning as defined in Code 100 Statement 100;
- 1.3 "black unemployed people" shall have the same meaning as defined in Code 100 Statement 100;

- 1.4 "Board" shall have the same meaning as defined in Code 200 Statement 200;
- 1.5 "Core Skills" means skills that are related to any of the following:
- 1.5.1 value-adding activities of the Measured Entity in line with its core business;
  - 1.5.2 in areas that the Measured Entity cannot outsource; or
  - 1.5.3 within the production/operational component of the Measured Entity's value-chain;  
*as opposed to the supply-side; services or downstream operations;*
- 1.6 "Critical Skills" are those skills to be identified by each SETA in accordance with Success Indicator 1.1 (Lever 1.1) of the National Skills Development Strategy. The Critical Skills for each Measured Entity will be determined by reference to Critical Skills identified by the relevant SETA having jurisdiction over each of the Measured Entity's spheres/areas of operation;
- 1.7 "Element" shall have the same meaning as defined in Code 000 Statement 000;
- 1.8 "employee" bears the meaning as defined in the Employment Equity Act;
- 1.9 "Enterprise" shall have the same meaning as defined in Code 100 Statement 100;
- 1.10 "Learnerships" refer to the skills development programs approved by the relevant SETA having jurisdiction over each of the Measured Entity's spheres/areas of operation and which are fully certified in accordance with the National Qualifications Framework maintained in terms of South African Qualifications Authority Act;
- 1.11 "Leviable Amount" bears the meaning as defined in the Skills Development Levies Act of 1999 as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act;
- 1.12 "Measured Entity" means an Enterprise as well as any organ of state or public entity subject to measurement under Codes;
- 1.13 "National Skills Development Strategy" means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act as further qualified in the strategy released by the Department of Labour in March 2005, covering the period 01 April 2005 to 31 March 2010;



- 1.14 "SETA" means a sector education and training authority, established by section 9(1) of the Skills Development Act having jurisdiction over Measured Entities;
- 1.15 "Skills Development Spend" comprises the amount of money that a Measured Entity spends on skills development that is over and above any of skills development levy payable in accordance with the Skills Development Levies Act determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act;
- 1.16 "the Act" means the Broad-Based Black Economic Empowerment Act of 2003;
- 1.17 "the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement;
- 1.18 "the Employment Equity Act" means the Employment Equity Act of 1998, as amended or substituted;
- 1.19 "the Income Tax Act" means the Income Tax Act of 1962;
- 1.20 "the Skills Development Act" means the Skills Development Act of 1998;
- 1.21 "the Skills Development Levies Act" means the Skills Development Levies Act of 1999;
- 1.22 "the Skills Development Scorecard" means the scorecard used for the measurement of skills development contributions in this statement; and
- 1.23 "Workplace Skills Plan" is the plan of a Measured Entity that is approved by the relevant SETA in accordance with Success Indicator 2.1 (Lever 2.1) of the National Skills Development Strategy.

## 2 INTERPRETATION OF THIS STATEMENT

- 2.1 When interpreting a provision of this statement, any reasonable interpretation that is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation that is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

### 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the skills development Element of broad-based black economic empowerment in respect of all Measured Entities.

### 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 4.1 specify the scorecard for the measurement of the skills development Element of BEE;
- 4.2 define the key measurement principles associated with the skills development Element;
- 4.3 specify the formula for measuring the skills development Element of BEE; and
- 4.4 specify the basis for the measurement of the organisational transformation contributions to BEE.

### 5 THE SKILLS DEVELOPMENT SCORECARD

5.1 The following table represents the criteria used for the purposes of deriving a score for skills development in terms of this statement:

Category	Skills Development Element		Weighting points	Compliance Target
5.1.1	Skills Development			
	5.1.1.1	Skills Development Spend on black employees as a percentage of Leviable Amount.	4	3%
	5.1.1.2	Skills Development Spend on Critical Skills and/or Core Skills for black employees as a percentage of Leviable Amount.	2	2.6%
	5.1.1.3	Skills Development Spend on Critical Skills and/or Core Skills for black women employees as a percentage of Leviable Amount.	2	1.4%
	5.1.1.4	Skills Development Spend on black employees with disabilities as a percentage of Leviable Amount.	1	0.3%
5.1.2	Learnerships			
	5.1.2.1	Number of black employees on SETA-accredited Learnerships as a percentage of total employees	2	5%
	5.1.2.2	Number of black women employees on SETA-accredited Learnerships as a percentage of total employees	2	2.5%
	5.1.2.3	Number of formerly black unemployed people and/or black people formerly residing in rural areas on Learnerships as a percentage of	1	1%

		total employees		
5.1.3	Organisational Transformational Index			
	5.1.3.1	Existence of a comprehensive Black Economic Empowerment strategy, that integrates all the elements of the BEE Scorecard, assigns clear executive responsibilities, creates appropriate functioning representative committees and which has been approved by the Board of the Measured Entity and which is being implemented	Yes	1
	5.1.3.2	Employment of a Skills Development Facilitator	Yes	1
	5.1.3.3	Existence of a policy on non-discrimination widely published within the Enterprise and which emphasises the promotion of racial, gender, religious and cultural diversity which is being implemented. An element of this implementation must be the regular and on-going facilitation of external diversity management training	Yes	1
	5.1.3.4	Compliance with all relevant employment related legislation	Yes	1
	5.1.3.5	Implementation of an effective human resource management plan which emphasises retention, career development and long-term career planning of all employees including learners and which is being implemented. Such plan must include targets against which performance is measurable.	Yes	1
	5.1.3.6	Existence of a program designed to give practical effect to the policies and programs in the items in paragraphs 5.1.3.1 to 5.1.3.5 through routine organisational social environmental audits the outcomes of which are published widely within the Measured Entity	Yes	1
TOTAL				6

5.2 Where a Measured Entity attains a score in respect of any one of the criteria specified in the skills development scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.

5.3 For the avoidance of doubt, the calculations in paragraphs 5.1.1.1 to 5.1.1.4 are not intended to be cumulative.

5.4 Any Skills Development Spend by a Measured Entity which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills Development Spend.

**C** is the percentage compliance target in respect of that criteria

**D** means the weighting points allocated to the applicable Skills Development criteria being measured.

8.2 The Learnership element of the Scorecard is calculated on the following basis:

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

Where

**A** is the score achieved in respect of any given criteria in the Skills Development Scorecard specified in paragraphs 5.1.2.1 to 5.1.2.3

**B** is the percentage of black registered accredited learnerships as a percentage of total number of employees in each of the relevant target groups specified in paragraphs 5.1.2.1 to 5.1.2.3

**C** is the percentage compliance target in respect of that criteria

**D** means the weighting points allocated to the applicable Skills Development criteria being measured.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

## STATEMENT 500: THE RECOGNITION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para	Subject	Page
1	Definitions.....	1
2	Interpretation of this statement.....	3
3	Application of this statement.....	3
4	Objectives of this statement.....	3
5	Preferential Procurement Scorecard.....	4
6	Key Measurement Principles.....	4
7	Total Measured Procurement Spend.....	5
8	Measurement of BEE Procurement Spend.....	8
9	The calculation of preferential procurement contributions to BEE.....	8

### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Associated Enterprise" means an associated enterprise as defined in Code 100 Statement 101;
- 1.2 "BEE Procurement Spend" means the BEE procurement spend determined in accordance with the provisions of paragraph 8;
- 1.3 "BEE Procurement Recognition Level" means the percentage BEE Procurement Recognition Levels as determined:

- 1.3.1 in relation to Enterprises which are neither Qualifying Small Enterprises nor Exempted Micro Enterprises, by reference to the mechanism for determining that level set out in Code 000 Statement 000;
- 1.3.2 in relation to Qualifying Small Enterprises, by reference to the mechanism for determining that level set out in Code 1000 Statement 1000; and
- 1.3.3 in relation to Exempted Micro Enterprises, a deemed BEE Procurement Recognition of 100% and BEE Status of Level 4 Contributor as contemplated in Code 1000 Statement 1000;
- 1.4 "BEE" means black economic empowerment;
- 1.5 "Enterprise" shall have the same meaning as defined in Code 100 Statement 100;
- 1.6 "Exempted Micro Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.7 "Measured Entity" means any Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.8 "Procurement Items" for the purposes of this statement, means the items referred to in paragraph 7.1;
- 1.9 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.10 "Supplier" means any supplier or service provider to a Measured Entity, regardless of whether such supplier or service provider may be a Qualifying Small Enterprise or an Exempted Micro Enterprise, provided that a portion of the supply or service provision made by that supplier or service provider falls within the definition of Total Measured Procurement Spend;
- 1.11 "the Act" means the Broad-based Black Economic Empowerment Act 53 of 2003;
- 1.12 "the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement;



1.13 "the National Small Business Act" means the National Small Business Act 102 of 1996, as amended or substituted; and

1.14 "Total Measured Procurement Spend" means total procurement spend of the Measured Entity as contemplated in paragraph 7.1 other than the exclusions in paragraph 7.

## **2 INTERPRETATION OF THIS STATEMENT**

2.1 When interpreting the provisions of this statement, any reasonable interpretation which is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation which is inconsistent with such objectives.

2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

## **3 APPLICATION OF THIS STATEMENT**

This statement is to be used in the measurement of the preferential procurement Element of broad-based black economic empowerment in respect of all Measured Entities.

## **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

4.1 specify the preferential procurement scorecard;

4.2 specify the key measurement principles to be applied when calculating preferential procurement contributions to BEE;

4.3 specify a basis for the award of an enhanced recognition status to certain categories of preferential procurement;

4.4 specify principles to be applied when calculating BEE Procurement Spend; and

4.5 specify the formula for the calculation of the individual criteria specified in the preferential procurement scorecard.

## 5 PREFERENTIAL PROCUREMENT SCORECARD

- 5.1 The following table represents the criteria for the purposes of deriving a score for preferential procurement in terms of this statement:

Criteria		Weighting points	Compliance target
5.1.1	BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	15	70%
5.1.2	BEE Procurement Spend from Qualifying Small Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%
5.1.3	BEE Procurement Spend from Exempted Micro Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	1	5%

- 5.2 For the avoidance of doubt, the calculations in paragraphs 5.1.1 to 5.1.3 are not intended to be cumulative.

## 6 KEY MEASUREMENT PRINCIPLES

- 6.1 Where a Measured Entity attains a score in respect of any one of the criteria specified in the preferential procurement scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.
- 6.2 All procurement of goods and services by the Measured Entity, other than such portion specifically excluded in terms of this statement, is to be included in the calculation of Total Measured Procurement Spend of the Measured Entity.
- 6.3 Where a Measured Entity can demonstrate that it procures goods and services directly from a Supplier which is also a recipient of enterprise development contributions to BEE made by the Measured Entity and which are recognized in terms of any statement in Code 600, all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend of the Measured Entity.

## 7 TOTAL MEASURED PROCUREMENT SPEND

7.1 Save as provided elsewhere in this paragraph, the following are considered to be Procurement Items:

7.1.1 all goods and services procured that comprise the cost of sales of the Measured Entity;

7.1.2 all goods and services procured that comprise the operational expenditure of the Measured Entity;

7.1.3 all capital expenditure incurred by the Measured Entity;

7.1.4 all goods and services procured from organs of state and public entities;

7.1.5 all goods and services procured from suppliers that enjoy a monopolistic position;

7.1.6 all procurement on behalf of a third party or a client, where the cost of that procurement is included as an expense in the Measured Entity's annual financial statements;

7.1.7 payment to independent contractors and to labour brokers for services provided by individuals who are not employees of the Measured Entity;

7.1.8 all goods and services procured for the purpose of implementing BEE initiatives, including without limitation, procurement in relation to skills development, enterprise development, as well as initiatives included under residual element of BEE;

7.1.9 all goods and services procured from a non-South African source and all imported goods and services procured; and

7.1.10 all goods and services procured from subsidiaries or holding companies of the Measured Entity, the terms "subsidiary" and "holding company" to be interpreted in accordance with the Companies Act 61 of 1973.

7.2 Notwithstanding the provisions of paragraph 7.1, the following list represents the only permissible exclusions from the Procurement Items in paragraph 7.1 in the calculation

of Total Measured Procurement Spend:

- 7.2.1 any amount payable to any person which represents a lawful tax or levy imposed by an organ of state duly authorised to impose such tax or levy. For the avoidance of doubt, any rates imposed by a municipality or other local government falls within this exclusion;
- 7.2.2 any amount payable to an employee as an element of their basic salary or wage. In this regard:
  - 7.2.2.1 any contribution made by an employer to any pension fund, provident fund or other post retirement funding scheme; or
  - 7.2.2.2 any amount contributed towards a medical aid or insurance product on behalf of the employers employees must be included within Total Measured Procurement Spend. Where the administrators of such pension funds, provident funds, other post retirement funding schemes, medical aid schemes or insurance products are able to distinguish between that portion of such contributions which relate to fund management costs and the remainder of such contributions, only that portion that relates to fund management costs will be included in the calculation of Total Measured Procurement Spend;
- 7.2.3 any emolument or similar payment paid to a director of a Measured Entity;
- 7.2.4 procurement of goods and services by a Measured Entity on behalf of a third party, where such procurement is not represented as an expense in the annual financial statements of the Measured Entity, provided that any such excluded Procurement Items must be included in the Total Measured Procurement Spend of the third party;
- 7.2.5 investments in or loans to an Associated Enterprise;
- 7.2.6 investments in or loans qualifying for recognition under any statement under Code 600;
- 7.2.7 donations, investments or loans qualifying for recognition under any statement under Code 700; any

7.2.8 subject to a maximum level of exclusion of which is by value equivalent to 25% of Total Procurement after exclusion of the items in paragraphs 7.2.1 to 7.2.7, the following imported goods and services:

7.2.8.1 imported capital goods or components for value-added production in South Africa provided that:

7.2.8.1.1 there is no existing local production of such capital goods or components; and

7.2.8.1.2 the importation of such capital goods or components facilitates further value-added production within South Africa;

7.2.8.2 imported goods and services other than as contemplated in paragraph 7.2.8.1 if there is no local production of such goods or services. For the avoidance of uncertainty, the following cannot be the sole grounds for exclusion of imported goods and services from Total Procurement Spend:

7.2.8.2.1 where the only difference between the imported goods or services and the locally produced goods or services is cost;

7.2.8.2.2 where the imported goods or services carry a brand different to the locally produced goods or services; or

7.2.8.2.3 where the imported goods or services have different technical specifications to the locally produced goods or services, but where such technical specifications have no direct impact on the value of the goods and services to the Measured Entity.

7.3 Notwithstanding the foregoing, where the Measured Entity procures services from a municipality or other local government and that municipality or other local government:

7.3.1 is itself the primary supplier of the services, such Procurement Items will be included in BEE Procurement Spend at the BEE Recognition Level of the municipality or other local government in question; and

7.3.2 procures that service from another primary Supplier, such Procurement Items will

be included in BEE Procurement Spend at the BEE Recognition Level of the primary Supplier of the services in question.

## 8 MEASUREMENT OF BEE PROCUREMENT SPEND

8.1 BEE Procurement Spend is calculated as the sum of the value of the Procurement Items not excluded in terms of paragraph 7.2 multiplied by the BEE Procurement Recognition Level of the Supplier.

8.2 BEE Procurement Spend is calculated as follows:

$$A = \sum (B \times C)$$

Where

*A* is the calculated total BEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of *B* and *C* in respect of each Supplier of the Measured Entity not excluded in accordance with paragraph 7.2

*B* is the value of Procurement Items not excluded in terms of paragraph 7.2 Procured from each Supplier of the Measured Entity

*C* is the BEE Procurement Recognition Level of each such Supplier of the Measured Entity

## 9 THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO BEE

A Measured Entity's score for preferential procurement contributions to BEE under the preferential procurement scorecard shall be calculated as follows:

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

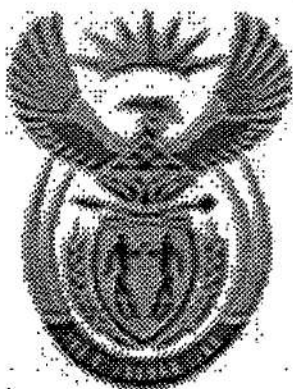
Where

*A* is the calculated preferential procurement score for each criteria in paragraphs 5.1.1, 5.1.2, 5.1.3 for the Measured Entity.

*B* is the total BEE Procurement Spend of the Measured Entity calculated in terms of paragraph 8.2 as a percentage of Total Measured Procurement Spend of that Measured Entity

*C* is the compliance target for each criteria specified in paragraphs 5.1.1, 5.1.2, 5.1.3

*D* is the Weighting points allocated to each criteria specified in paragraphs 5.1.1, 5.1.2, 5.1.3



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.



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

### STATEMENT 600: THE RECOGNITION OF ENTERPRISE DEVELOPMENT CONTRIBUTIONS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this statement.....	3
3 Application of this statement.....	4
4 Objectives of this statement.....	4
5 The Enterprise Development scorecard.....	4
6 Key Measurement Principles .....	5
7 Monetary and non-monetary contributions.....	7
8 Measurement of Qualifying Enterprise Development Contributions.....	9
9 Measurement of Bonus Points.....	11

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Acceptable Valuation Standard" means a valuation in Rand value of a Qualifying Enterprise Development Contribution, whether monetary or non-monetary, relevant to measurement under this statement. All such valuations shall be undertaken in accordance with normal valuation methodologies that represent standard market practice;
- 1.2 "applicable interest rate" means the prime interest rate as determined by the primary banker of the Measured Entity on the basis of the REPO rate set by the South African Reserve Bank;
- 1.3 "BEE" means black economic empowerment;

1.4 **"Beneficiary Entity"** means:

- 1.4.1 a micro enterprise which is an Exempted Micro Enterprise as defined in Code 1000 Statement 1000;
- 1.4.2 an Enterprise in which in excess of 50% is owned by black people and which is a Level One to Six contributor to BEE as determined by reference to Code 000 Statement 000;
- 1.4.3 an Enterprise which is a Level One to Three BEE contributor to BEE as determined by reference to Code 000 Statement 000, regardless of the black ownership status of the Enterprise;
- 1.4.4 a Qualifying Small Enterprises in which in excess of 50% is owned by black people and which is a Level One to Six contributor to BEE as determined to Code 1000 Statement 1000; or
- 1.4.5 a Qualifying Small Enterprises which is a Level One to Three BEE contributor to BEE as determined by reference to Code 1000 Statement 1000, regardless of the black ownership status of the Qualifying Small Enterprise.

For the purposes of this definition, the term "50% owned by black people" is to be interpreted as meaning an Enterprise in which black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise and in respect of which the full seven points under the net equity interest component of the ownership scorecard have been attained, such economic interest, voting rights and net equity interest will be measured using the principles and definitions set out in Code 100 Statement 100 provided that the modified flow-through, control and exclusions principles shall not be applied;

- 1.5 **"EBITDA"** means earnings before income tax, depreciation and amortisation interpreted in accordance with South African Generally Accepted Accounting Practice;
- 1.6 **"Enterprise"** shall have the same meaning as defined in Code 100 Statement 100;
- 1.7 **"Exempted Micro Enterprise"** has the meaning defined in Code 1000 Statement 1000;
- 1.8 **"Inception Date"** means a date specified by a Measured Entity as being the date from which its enterprise development contributions should be measured where that Measured Entity has initiated such contributions prior to the commencement date of this statement.

The Inception Date shall not be a date earlier than 5 years prior to the commencement date of this statement;

- 1.9 "Measured Entity" means an Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.10 "Non-Recoverable Contribution" means the monetary value of Qualifying Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity in a form of grants, donation, discounts and other similar quantifiable benefits which are not recoverable by the Measured Entity;
- 1.11 "Qualifying Enterprise Development Contributions" means monetary or non-monetary, recoverable or Non-Recoverable Contributions actually initiated and implemented in favour of Beneficiary Entities by a Measured Entity with the specific objective of assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such Beneficiary Entities through the expansion of those Beneficiary Entities' financial and/or operational capacity;
- 1.12 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000; and
- 1.13 "Recoverable Contribution" means the monetary value of Qualifying Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity that must be repaid or returned to the Measured Entity upon the happening of a specified event;
- 1.14 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003.

## 2 INTERPRETATION OF THIS STATEMENT

- 2.1 When interpreting a provision of this statement, any reasonable interpretation which is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation which is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

### 3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the enterprise development element of broad-based black economic empowerment in respect of all Measured Entities with the exception of the following:

- 3.1 any form of Measured Entity specifically dealt with in terms of another Statement in Code 600 to the exclusion of this statement; and
- 3.2 any Measured Entity that is expressly excluded from the provisions of this statement by the Minister by notice in a gazette.

### 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are:

- 4.1 specify the enterprise development scorecard;
- 4.2 specify the key measurement principles to be applied when calculating Qualifying Enterprise Development Contributions to BEE;
- 4.3 provide guidance as to the nature of monetary and non-monetary contributions;
- 4.4 specify the formula for the calculation of the individual criteria specified in the enterprise development scorecard; and
- 4.5 specify the basis for the award of bonus points.

### 5 THE ENTERPRISE DEVELOPMENT SCORECARD

- 5.1 The following table represents the criteria and methodology used for the purposes of deriving a score for enterprise development in terms of this statement:

Criteria		Weighting Points	Compliance Target
5.1.1	Cumulative Non-Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/Inception Date to the date of measurement.	6	2%
5.1.2	Cumulative Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/Inception Date to the date of measurement.	4	3%
5.1.3	Bonus Points		refer to paragraph 9

- 5.2 Where a Measured Entity attains a score in respect of any one of the criteria specified

in the enterprise development scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.

## 6 KEY MEASUREMENT PRINCIPLES

- 6.1 Measured Entities shall be entitled to receive recognition for any Qualifying Enterprise Development Contributions that are capable of being quantified as having a Rand value using an Acceptable Valuation Standard.
- 6.2 Qualifying Enterprise Development Contributions of any Measured Entity shall be measured cumulatively from the commencement date of this statement until the date of measurement.
- 6.3 Notwithstanding paragraph 6.2, any Measured Entity that commenced making Qualifying Enterprise Development Contributions prior to the commencement date of this statement shall be entitled to designate an earlier Inception Date.
- 6.4 Where an earlier Inception Date has been designated, the Measured Entity will continue to be bound by that Inception Date for the continued duration of this statement
- 6.5 Qualifying Enterprise Development Contributions considered:
  - 6.5.1 Recoverable Contributions include, without limitation:
    - 6.5.1.1 the annualised value of the monthly average value of the investment in qualifying Beneficiary Entities;
    - 6.5.1.2 the annualised value of the monthly average value of the loans granted to qualifying Beneficiary Entities;
    - 6.5.1.3 the annualised value of the monthly average value guarantees given to Beneficiary Entities; and
    - 6.5.1.4 the value of credit facilities made available to qualifying Beneficiary Entities.
  - 6.5.2 Non-Recoverable Contributions include, without limitation:
    - 6.5.2.1 direct costs incurred by a Measured Entity in assisting and accelerating the development of Beneficiary Entities;
    - 6.5.2.2 any overhead costs of a Measured Entity directly attributable to Qualifying Enterprise Development Contributions;



- 6.5.2.3 provision by a Measured Entity of seed and developmental capital to Beneficiary Entities;
  - 6.5.2.4 preferential credit terms granted by a Measured Entity to Beneficiary Entities; and
  - 6.5.2.5 preferential terms granted by a Measured Entity in respect of its supply of goods and/or services to Beneficiary Entities.
- 6.6 The Rand value of certain enterprise development contributions will be calculated at a specified multiple of the quantified contributions. Such contributions and their multiples are as follows:
- 6.6.1 Qualifying Enterprise Development Contributions which directly contribute towards the creation of employment opportunities in rural communities and, in particular but without limitation, in any geographic areas identified in the government's integrated sustainable rural development and urban renewal programmes qualify for recognition at a multiple of 1.5 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards. This multiple will apply notwithstanding the award of any bonus points for Qualifying Enterprise Development Contributions which directly contribute to employment creation in South Africa in general;
  - 6.6.2 Qualifying Enterprise Development Contributions which assist and accelerate the development of Exempted Micro Enterprises, qualify for recognition at a multiple of 1.25 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards;
  - 6.6.3 Qualifying Enterprise Development Contributions which assist and accelerate the development of Beneficiary Entities which manufacture, produce or sell goods and/or services not previously produced or manufactured in South Africa qualify for recognition at a multiple of 1.5 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards; and
  - 6.6.4 Provided that such contributions are not made in respect of a warehousing fund owning an equity interest in the Measured Entity, monetary contributions to the funding of warehousing funds as contemplated in Code 100 Statement 102 qualify for recognition at a multiple of 1.25 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards.
- 6.7 Save as provided in paragraph 6.6.4, no points shall be awarded under this statement to a

Measured Entity arising from any financial transaction concluded in respect of which points have been awarded under Code 100.

## 7 MONETARY AND NON-MONETARY CONTRIBUTIONS

7.1 Subject always to the definition of Qualifying Enterprise Development Contributions, the following monetary/non-monetary contributions will, without limitation, be considered:

7.1.1 the provision of seed or development capital;

7.1.2 contributions made to settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a Beneficiary Entity including, without limitation:

7.1.2.1 professional and consulting services;

7.1.2.2 licensing and/or registration fees;

7.1.2.3 industry specific levies and/or other such fees; and

7.1.2.4 IT services;

7.1.3 payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf;

7.1.4 subject to paragraph 7.2, creation or development of capacity and expertise for Beneficiary Entities required to manufacture or produce goods and/or services previously not manufactured, produced or provided in the Republic of South Africa;

7.1.5 subject to paragraph 7.3, provision of preferential credit facilities;

7.1.6 subject to paragraph 7.2, facilitation of access to credit for Beneficiary Entities unable to access similar credit facilities through traditional means owing to a lack of credit history, high risk and/or lack of collateral;

7.1.7 subject to paragraph 7.4, provision of training and/or mentoring to Beneficiary Entities which will assist the Beneficiary Entities to increase their operational and/or financial capacity; and

7.1.8 subject to paragraph 7.5, the maintenance by the Measured Entity of an enterprise development unit which focuses exclusively on support of Beneficiary Entities or candidate Beneficiary Entities.

7.2 The creation and/or development of the capacity of Beneficiary Entities which will enable



them to manufacture and produce goods and/or provide services previously not available in the Republic of South Africa, may constitute a Qualifying Enterprise Development Contribution, and will be measured as the rand value of monetary contributions made as well as investments into, loans made to or guarantees given for a Beneficiary Entity.

7.3 Provision of preferential credit facilities to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise Development Contribution. Examples of such contributions include without limitation:

7.3.1 provision of finance to Beneficiary Entities at rates of interest below the applicable rate. Such contributions will be measured as the value of the differential between the actual interest rate provided to the Beneficiary Entity and the applicable rate;

7.3.2 relaxed security requirements or absence of security requirements for Beneficiary Entities unable to provide security for loans. Such contributions shall be measured as being 3% (three percent) of any positive differential between the initial capital value of the loan and the value of security taken; and

7.3.3 settlement of accounts with Beneficiary Entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided that the shorter period is no longer than 21 days. Preferential payment terms which extend beyond 21 days will not qualify as Qualifying Enterprise Development Contributions;

7.4 Provision of training and/or mentoring to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise Development Contribution. Such contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not be included in this cost. Furthermore, a clear justification must be supplied with respect to the calculation of such time costs incurred, commensurate with the level of seniority and expertise of the trainer or mentor. Common forms of such contribution include without limitation:

7.4.1 Professional and consulting services;

7.4.2 IT services; and

7.4.3 any other services which help to increase the entity's financial and/or operational capacity and which have not also been accounted for under skills development.

7.5 The maintenance of an enterprise development unit by the Measured Entity may

constitute a Qualifying Enterprise Development Contribution. Common examples of such contributions include without limitation the salaries and wages of staff and other expenses involved in the operation of such enterprise development unit. Notwithstanding the foregoing, only that portion of salaries and wages which relate to time spent by the staff in and the other expenses related to the promotion and implementation of enterprise development in respect of Beneficiary Entities or candidate Beneficiary Entities should be taken into consideration under enterprise development contributions.

- 7.6 Payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf may constitute a Qualifying Enterprise Development Contribution.

## 8 MEASUREMENT OF QUALIFYING ENTERPRISE DEVELOPMENT CONTRIBUTIONS

- 8.1 Qualifying Enterprise Development Contributions that are considered Non-Recoverable Contributions are calculated on the following basis:

$A = \frac{B}{C} \times D$	
Where	
A is the score achieved in respect of the Non-Recoverable Contributions made by the Measured Entity	
B is the cumulative Non-Recoverable Contributions made by the Measured Entity in favour of Beneficiary Entities measured from the commencement of the Statement or the designated Inception Date until the date of measurement.	
C is compliance Target in respect of the Non-Recoverable Contributions as specified in paragraph 5.1.1	
D is the Weighting points allocated to the applicable enterprise development criteria being measured as specified in paragraph 5.1.1	

- 8.2 Qualifying Enterprise Development Contributions that are considered Recoverable Contributions are calculated on the following basis:

Formula A	
$B = \frac{D}{E}$	
Where	
B is the number to be used in formula C below and represents the Recoverable Contributions made	

<p>relative to compliance target contemplated in paragraph 5.1.2</p> <p><i>D</i> is cumulative annualised value of monthly Recoverable Contributions made by the Measured Entity as a percentage of cumulative annualised value of EBITDA measured from the commencement/Inception Date to the date of measurement</p> <p><i>E</i> is the percentage compliance Target in respect of the recoverable contributions as specified in paragraph 5.1.2</p>
<p style="text-align: center;"><b>Formula B</b></p> $C = \frac{G - F}{G}$
<p>Where</p> <p><i>C</i> is the number to be used in formula C and represents the interest differential between the actual interest charged on Recoverable Contributions and the Applicable Interest Rate</p> <p><i>F</i> is the actual interest rate paid by the Beneficiary Entity from the commencement/Inception Date to the date of measurement</p> <p><i>G</i> is the Applicable Interest Rate</p>
<p style="text-align: center;"><b>Formula C</b></p> $A = B \times \left( 1 + \frac{C}{5} \right) \times H$
<p>Where</p> <p><i>A</i> is the score under paragraph 5.1.2</p> <p><i>B</i> is the result of the calculation in formula A</p> <p><i>C</i> is the result of the calculation in formula B</p> <p><i>H</i> is the Weighting points allocated to the applicable enterprise development criteria being measured as specified in paragraph 5.1.2</p>

- 8.3 To the extent that a Measured Entity makes only Non-Recoverable Contributions to the exclusion of Recoverable Contributions, the weighting allocated to Non-Recoverable Contributions in paragraph 5.1.1 shall be increased to 10 and the corresponding target will be increased to 3.3%.
- 8.4 To the extent that a Measured Entity makes only Recoverable Contributions to the exclusion of Non-Recoverable Contributions, there shall be no adjustment to the enterprise development Scorecard.

## 9 MEASUREMENT OF BONUS POINTS

- 9.1 Measured Entities are encouraged to assist in the creation of employment opportunities in the Republic of South Africa, through their Qualifying Enterprise Development Contributions. To this end, Measured Entities will be awarded a bonus point for Qualifying Enterprise Development Contribution which directly contribute towards increased employment levels in the preceding year. Such bonus points are not carried over from one year to another and qualification will be determined in each year by reference to Qualifying Enterprise Development Contributions made in the preceding year. In addition, the bonus point will only be awarded against submission by the Measured Entity of adequate proof that their Qualifying Enterprise Development Contributions directly contributed to the creation of increased employment levels.



**REPABOLIKI YA AFERIKA BORWA**

**REPUBLIEK VAN SUID AFRIKA**

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

## CODE 700: MEASUREMENT OF THE RESIDUAL ELEMENT OF BROAD BASED BLACK-ECONOMIC EMPOWERMENT

### STATEMENT 700: THE RECOGNITION OF RESIDUAL CONTRIBUTIONS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this statement.....	3
3 Application of this statement.....	3
4 Objectives of this statement.....	4
5 The residual contribution Scorecard.....	4
6 Key Measurement Principles .....	5
7 Measurement of the Residual Element .....	6
8 Measurement of Bonus Points .....	6

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Acceptable Valuation Standard" means a valuation in Rand value of a Qualifying Residual Contribution, whether monetary or non-monetary, relevant to measurement under this statement. All such valuations shall be undertaken in accordance with normal valuation methodologies that represent standard market practice as qualified by the provisions of paragraph 6.5;
- 1.2 "BEE" means black economic empowerment;
- 1.3 "black people" shall have the same meaning as defined in Code 000 Statement 000;
- 1.4 "Contribution Beneficiaries" means any of the following beneficiaries:
  - 1.4.1 communities, natural persons and/or groups of natural persons consisting exclusively



of black people;

1.4.2 communities, natural persons and/or groups of natural persons where at least 75% of the value of the benefits accrue to natural persons who are Black People; and

1.4.3 any project or scheme targeting infrastructural development and/or reconstruction in underdeveloped areas or in rural communities or geographic areas identified in the government's integrated sustainable rural development and urban renewal programmes.

1.5 "Corporate Social Investment" refers to an enterprise's contributions to society and community that are extraneous to its regular business activities. CSI interventions may include, but will not be limited to –

1.5.1 Development Programmes for women, youth, people with disabilities, people living in rural areas and other target groups

1.5.2 Health: support of health and HIV/AIDS programmes in the community

1.5.3 Education: support for community education facilities, programmes at secondary and tertiary education level, bursaries and scholarships

1.5.4 Training: community training, skills development for unemployed, adult basic education and training in communities

1.5.5 Environment: which focuses on conservation, awareness, education and waste management

1.5.6 Arts & Culture: support of development programmes, development of new talent and

1.5.7 Sport: support of developmental programmes

1.6 "Enterprise" shall have the same meaning as defined in Code 000 Statement 000;

1.7 "Inception Date" means a date specified by a Measured Entity as being the date from which its residual contributions should be measured where that Measured Entity has initiated such contributions prior to the commencement date of this statement. The Inception Date shall not be a date earlier than 5 years prior to the commencement date of this statement;

1.8 "Industry Specific Contribution" means the qualifying residual contributions that are unique to the industry in which enterprises operates. For the purposes of this statement an industry may be grouped in major divisions in accordance with the Standard Industrial



**Classification Coding System used by Statistic South Africa**

- 1.9 **"Measured Entity"** shall bear the same meaning assigned in Code 000 Statement 000;
- 1.10 **"Non-Recoverable Contribution"** means the monetary value of Qualifying Residual Contributions made by the Measured Entity to the Contribution Beneficiary in a form of grants, donations, and other similar quantifiable benefits which are not recoverable by the Measured Entity;
- 1.11 **"Qualifying Residual Contributions"** means monetary or non-monetary contributions actually initiated and implemented in favour of Contribution Beneficiaries by a Measured Entity with the specific objective of facilitate access to the economy for Contribution Beneficiaries and is inclusive of both Corporate Social Investment and Industry Specific Contributions;
- 1.12 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.13 **"the Codes"** means all Codes of Good Practice issues in terms of section 9 of the Act, including without limitation, this statement; and
- 1.14 **"this statement"** means this Code of Good Practice 700, Statement 700 issued in terms of section 9 of the Act.

**2 INTERPRETATION OF THIS STATEMENT**

- 2.1 When interpreting a provision of this statement, any reasonable interpretation which is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation which is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

**3 APPLICATION OF THIS STATEMENT**

This statement is to be used in the measurement of the residual element of broad-based black economic empowerment in respect of all Measured Entities with the exception of the following:

- 3.1 any form of Measured Entity or residual contribution specifically dealt with in terms of another Statement in Code 700 to the exclusion of this statement; and
- 3.2 any Measured Entity that is expressly excluded from the provisions of this statement by the Minister by notice in a gazette.

#### 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are:

- 4.1 specify the residual contribution scorecard;
- 4.2 specify the key measurement principles to be applied when calculating Qualifying Residual Contributions to BEE;
- 4.3 specify the formula for the calculation of the criteria specified in the residual contribution scorecard; and
- 4.4 specify the basis for the award of bonus points.

#### 5 THE RESIDUAL CONTRIBUTION SCORECARD

The following table represents the criteria and methodology used for the purposes of deriving a score for Qualifying Residual Contributions in terms of this statement:

Criteria		Weighting Points	Compliance Target
5.1.1	Cumulative Rand value of Non-recoverable Qualifying Corporate Social Investment Contributions made by a Measured Entity to Contribution Beneficiaries measured as a percentage of cumulative net profit after tax measured from the commencement date of this statement or the Inception Date until the date of measurement.	5	15%
5.1.2	Cumulative Rand value of Qualifying Industry Specific Contributions made by a Measured Entity to Contribution Beneficiaries measured as a percentage of cumulative net profit after tax measured from the commencement date of this statement or the Inception Date until the date of measurement.	5	15%
5.1.3	Bonus Points	1	refer to paragraph 8

5.2 To the extent that a Measured Entity makes only Non-recoverable Qualifying Corporate Social Investment Contributions to the exclusion of Industry Specific Contributions, the weighting allocated to Corporate Social Investment Contributions in paragraph 5.1.1 shall be increased to 10 and the corresponding target will be increased to 3%.

5.3 To the extent that a Measured Entity makes only Industry Specific Contributions to the exclusion of Corporate Social Investment Contributions, there shall be no adjustment to the Qualifying Residual Contribution Scorecard.

## 6 KEY MEASUREMENT PRINCIPLES

- 6.1 Measured Entities shall be entitled to receive recognition for any Qualifying Residual Contributions that are capable of being quantified as having a Rand value using an Acceptable Valuation Standard.
- 6.2 Qualifying Residual Contributions of any Measured Entity shall be measured cumulatively from the commencement date of this statement until the date of measurement.
- 6.3 Notwithstanding paragraph 6.2, any Measured Entity that commenced making Qualifying Residual Contributions prior to the commencement date of this statement shall be entitled to designate an earlier Inception Date which shall not go back more than five years prior to the commencement date of this statement.
- 6.4 Where an earlier Inception Date has been designated, the Measured Entity will continue to be bound by that Inception Date for the continued duration of this statement.
- 6.5 This statement provides guidance as to the Acceptable Valuation Standards to be applied to the determination of the value of Qualifying Residual Contributions. The minister shall be entitled, from time to time, to provide further guidance in this regard through the issue of further statements or amendments to this statement.
- 6.6 Notwithstanding the provisions of paragraph 6.5, the Rand value of Qualifying Residual Contributions which directly provide Contribution Beneficiaries who are natural persons with a means of generating an income for themselves will be calculated at the specified multiple of 1.5 to actual Rand value measured using an Acceptable Valuation Standard.
- 6.7 Where any uncertainty exists as to whether certain contributions falls within the ambit of the statements in Code 600 or under Code 700, that particular contribution may only be claimed under one of those Codes.
- 6.8 Non-monetary contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not, however, be included in this cost. Notwithstanding the foregoing, only that portion of salaries and wages which relate to time spent by the staff in the implementation of residual initiatives for the benefit of Contribution Beneficiaries should be taken into consideration under qualifying Residual Contributions. Furthermore, a clear justification must be supplied to verification agencies with respect to the calculation of such costs incurred, commensurate with the level of seniority and level of remuneration

of the employee(s) and or manager(s). Such non-monetary contributions must be separately identified from other Qualifying Residual Contributions made by the Measured Entity.

## 7 MEASUREMENT OF THE RESIDUAL ELEMENT

Qualifying Residual Contributions are calculated on the following basis:

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

Where

**A** is the score achieved in respect of the non-recoverable residual contributions made by the Measured Entity

**B** is the cumulative contributions made by the Measured Entity in favour of Contribution Beneficiaries measured from the commencement of the Statement or the designated Inception Date until the date of measurement.

**C** is the percentage compliance Target in respect to the applicable residual contribution criteria being measured as specified in paragraph 5.1.1, 5.1.2

**D** is the Weighting points allocated to the applicable residual contribution criteria being measured as specified in paragraph 5.1.1, 5.1.2

## 8 MEASUREMENT OF BONUS POINTS

A Measured Entity will qualify for the award of one bonus point for Qualifying Residual Contributions which benefit natural persons living in rural communities and/or natural persons living in the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme in the preceding year. Notwithstanding the number of initiatives implemented in such areas, a maximum of one bonus point may be awarded and no such bonus points will be carried over from one year to another unless that contribution is repeated.



the dti

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

# QUALIFYING SMALL ENTERPRISES





REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.



# CODE 1000: FRAMEWORK FOR THE MEASUREMENT OF BROAD BASED BLACK ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL ENTERPRISES

## STATEMENT 1000: THE ORGANISATION OF THE QUALIFYING SMALL ENTERPRISES CODES OF GOOD PRACTICE, THE ELEMENTS OF BROAD BASED BLACK ECONOMIC EMPOWERMENT AND THE QUALIFYING SMALL ENTERPRISES SCORECARD

Issued under section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003

### Arrangement of this Statement

Para	Subject	Page
1	Definitions.....	1
2	Interpretation of this Statement.....	3
3	Application of this Statement .....	3
4	Objectives of this Statement .....	3
5	Interpretative Principles .....	4
6	The organisation of the Qualifying Small Enterprises Codes.....	5
7	The Elements of Broad-Based Black Economic Empowerment.....	6
8	The Qualifying Small Enterprises scorecard .....	7
9	Application of the Qualifying Small Enterprises scorecard .....	9
10	Treatment of Micro Enterprises.....	9
11	Transitional Period.....	9
12	Duration of the Codes.....	10
13	Determining eligibility as a Qualifying Small Enterprise.....	10

### 1 DEFINITIONS

In this statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "BEE Procurement Recognition Level " means the percentage BEE Procurement Recognition Levels as determined in the table in paragraph 8.2.2



- 1.2 "BEE Status" means the compliance bands referred to in paragraph 8.2;
- 1.3 "BEE" means black economic empowerment;
- 1.4 "black people" means African, Coloured or Indian persons who are natural persons and:
- 1.4.1 are citizens of the Republic of South Africa by birth or descent; or
- 1.4.2 are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or
- 1.4.3 became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date;
- 1.5 "Deemed Micro Enterprise Recognition Level" means BEE Procurement Recognition Level of 100% and BEE Status of Level 4 as contemplated in Paragraph 10;
- 1.6 "Elements" means the measurable quantitative or qualitative elements of BEE compliance specified in this Statement;
- 1.7 "Employment Equity Act" means the Employment Equity Act 55 of 1998, as amended;
- 1.8 "Exempted Micro Enterprises" means an enterprise which:
- 1.8.1 qualifies for BEE compliance exemption by nature of the fact that the Enterprise has an annual turnover of less than the VAT registration limit as per the Value Added Tax Act of 1991; and
- 1.8.2 meets the principles of non-circumvention in terms of 5.1 to 5.6 of this Statement
- 1.9 "Qualifying Small Enterprise" means an enterprise that qualifies for measurement under the qualifying small enterprise scorecard, in terms of paragraph 13 of this statement;
- 1.10 "Target" means the targets attributed to the various Elements in the Generic Scorecard;
- 1.11 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.12 "the Codes" means this Statement and all Codes of Good Practice issued in terms of

section 9 of the Act;

- 1.13 "the Generic Scorecard" means the Broad-Based Black Economic Empowerment scorecard as per Code 000 Statement 000, issued under the Act;
- 1.14 "the Qualifying Small Enterprises Scorecard" means the Scorecard referred to in paragraph 8 of this statement;
- 1.15 "the Strategy Document" means the document entitled "South Africa's Economic Transformation – A Strategy for Broad-Based Black Economic Empowerment" published by the department of trade and industry in March 2003, subject to any amendment or substitution in terms of section 11 of the Act;
- 1.16 "Transitional Period" means the period referred to in paragraph 11; and
- 1.17 "Weighting" means the weightings attributed to various Elements in the Qualifying Small Enterprises Scorecard in Codes 1100 – 1700.

## 2 INTERPRETATION OF THIS STATEMENT

The provisions of this statement must be interpreted in a manner that is consistent with the objectives of the Act and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement applies to all broad-based black economic empowerment initiatives conceived and implemented by all eligible Qualifying Small Enterprises that elect to be measured in terms of Codes 1000 to 1700
- 3.2 Qualifying Small Enterprises may take guidance from Statement 000 to 900 in circumstances where additional clarity is required.

## 4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are:

- 4.1 to specify interpretative principles of BEE;
- 4.2 to provide further clarity as to the organisation of the Codes in respect of Small Qualifying Enterprises;

- 4.3 to specify the Elements of broad-based black economic empowerment to be measured in the Qualifying Small Enterprise Scorecard;
- 4.4 to specify the Qualifying Small Enterprise Scorecard;
- 4.5 to provide clarification on the application of the Qualifying Small Enterprises Scorecard
- 4.6 to determine the treatment of micro enterprises for the purposes of BEE
- 4.7 to make provision for a transitional period before the mandatory use of the Qualifying Small Enterprise Scorecard commences;
- 4.8 to define the duration for the applicability of the Codes; and
- 4.9 to determine the types of enterprise eligible to be classified as Qualifying Small Enterprises

## 5 INTERPRETATIVE PRINCIPLES

- 5.1 The fundamental principle of measurement of BEE compliance is that substance takes precedence over legal form.
- 5.2 It is a fundamental principle of the Codes that all measurement of BEE initiatives is based on the actual level of BEE compliance at the date of measurement.
- 5.3 If an enterprise misrepresents, or attempts to misrepresent, the true BEE Status of the enterprise with a false or unjustifiably favourable status, the entire BEE scorecard for that enterprise will be disqualified.
- 5.4 Any representation made by an enterprise with respect to BEE compliance must be capable of being supported by appropriate evidence or documentation.
- 5.5 If an enterprise fails to provide evidence or documentation supporting a representation with respect to BEE compliance, the enterprise must not be awarded any points relating to that representation.
- 5.6 In instances where Enterprises, which split, separate or divide themselves with the intention of making the newly divided Enterprise(s) eligible for BEE compliance exemption as an Exempted Micro Enterprise or eligible for measurement under the

Qualifying Small Business Scorecard, those initiatives may be regarded as an attempt at circumvention.

- 5.7 Verification agencies must report to the Minister any apparent attempt at circumventing the Act.

## 6 THE ORGANISATION OF THE QUALIFYING SMALL ENTERPRISES CODES

- 6.1 The following table represents the number ranges for the Codes issued in respect of Qualifying Small Enterprises under the Act:

Code number range	General subject matter
Code 1000	Framework for the measurement of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1100	Measurement of the ownership Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1200	Measurement of the management control Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1300	Measurement of the employment equity Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1400	Measurement of the skills development Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1500	Measurement of the preferential procurement Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1600	Measurement of the enterprise development Element of broad-based black economic empowerment for Qualifying Small Enterprises
Code 1700	Measurement of the residual Element of broad based black-economic empowerment for Qualifying Small Enterprises

## **7 THE ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

- 7.1 The ownership Element, as set out in Code 1100, measures the entitlement of black people to participate in the ownership of an enterprise.
- 7.2 The management control Element, as set out under Code 1200, measures the effective control of enterprises by black people.
- 7.3 The employment equity Element, as set out under Code 1300, measures initiatives intended to achieve equity in the workplace in accordance with
  - 7.3.1 the Act; and
  - 7.3.2 the Employment Equity Act.
- 7.4 The skills development Element, as set out under Code 1400, measures the extent to which employers' implement initiatives designed to promote the skills development of black employees and utilizes the National Skills Fund.
- 7.5 The preferential procurement Element, as set out under Code 1500, measures the extent to which enterprises procure from broad-based black empowerment contributors including micro enterprises as well as qualifying small enterprises.
- 7.6 The enterprise development Element, as set out under Code 1600, measures the extent of implementation of initiatives intended to assist and accelerate the development of enterprises.
- 7.7 The residual Element, as set out under Code 1700, measures the extent to which enterprises implement sector specific initiatives as well as other initiatives that contribute towards social development and directly facilitate access to the economy for black people.

## 8 THE QUALIFYING SMALL ENTERPRISES SCORECARD

8.1 The following table represents the Qualifying Small Enterprises Scorecard and contains:

8.1.1 the Elements of the scorecard;

8.1.2 the weightings, and

8.1.3 the primary reference Codes which specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Codes 1100 – 1700).

Element	Weighting	Primary Codes Reference
Ownership	20 points	Code 1100
Management control	20 points	Code 1200
Employment equity	20 points	Code 1300
Skills development	20 points	Code 1400
Preferential procurement	20 points	Code 1500
Enterprise development	20 points	Code 1600
Residual	20 points	Code 1700

8.2 An enterprise will be evaluated as falling into one of the following BEE Statuses based on the overall performance in terms of the Qualifying Small Enterprises Scorecard:

8.2.1 the BEE Status will be determined through the points qualification as specified in the centre column; and

8.2.2 the BEE Status attained will determine the BEE procurement recognition level that the enterprise will obtain for the purposes of measurement of the preferential procurement Element contemplated in Code 1500.



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

8.3 The BEE Status of an enterprise, must be raised to the next highest BEE Status level to the one at which it is evaluated, when:

8.4 black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise; and

8.4.1 that enterprise has achieved the full seven points under the net equity interest component of the ownership scorecard,

8.4.2 The "economic interest, "exercisable voting rights" and "net equity interest" referred to



in paragraph 8.3 must be measured in accordance with Code 1100 Statement 1100.

## **9 APPLICATION OF THE QUALIFYING SMALL ENTERPRISES SCORECARD**

- 9.1 A Qualifying Small Enterprise may elect to be measured using five of the seven elements of broad-based black economic empowerment
- 9.2 Should there be no employees in the employ of the measured enterprise, the enterprise cannot include the employment equity Elements as one of the elected elements
- 9.3 Each indicator will have a weighting of 20 percent, resulting in a total of 140 available BEE points
- 9.4 When electing to be measured using more than five of the seven Elements, the BEE Status must be determined using a total of 125 BEE points
- 9.5 A Qualifying Small Enterprise which elects to include the ownership Element in their measurement, will have its ownership score (including bonus points) multiplied by 1.25, provided that the enterprise scores a minimum of 20 points (including bonus points) for ownership, before the application of this multiple.

## **10 TREATMENT OF MICRO ENTERPRISES**

Exempted Micro Enterprises, as defined in paragraph 1.8 and as identified in Annexe 1000-B of this Statement, will have a deemed BEE Contribution Level of Four, as laid out in the table in paragraph 8.2.

## **11 TRANSITIONAL PERIOD**

- 11.1 All BEE compliance measurement under the Codes will be undertaken in accordance with the Qualifying Small Enterprises Scorecard with effect from the end of the 12<sup>th</sup> month following the commencement of this Statement. However, to the extent that the attainment of the objectives of the Act may be compromised, the Minister may reconsider that date.
- 11.2 During the Transitional Period of 12 months following the commencement of this Statement, an enterprise may calculate its BEE compliance:
  - 11.2.1 in accordance with the Qualifying Small Enterprise Scorecard; or,

- 11.2.2 on the basis of measuring only the ownership and management control Elements, in which case the following formula must be used:

$$A = B \times 1.92$$

Where

*A* is the indicative BEE Status during the Transitional Period

*B* is to total score achieved in respect of Code 1100 and Code 1200

## 12 DURATION OF THE CODES

- 12.1 A Code will be in effect:

12.1.1 until amended, substituted or repealed pursuant to section 9 of the Act; or

12.1.2 otherwise, for a period of 10 years.

- 12.2 Despite the paragraph above, the Minister reserves the right to review the period of the duration of the Codes.

## 13 DETERMINING ELIGIBILITY AS A QUALIFYING SMALL ENTERPRISE

- 13.1 Annexe 1000-B specifies the identification of enterprises eligible to be classified as Qualifying Small Enterprises.

- 13.2 For the avoidance of doubt, Annexe 1000-B should be interpreted as follows:

13.2.1 Within the agricultural sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R2.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R2.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

13.2.2 Within the mining and quarrying sector in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R7.50 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is

greater than R7.50 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

- 13.2.3 Within the manufacturing sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.4 Within the electricity, oil and gas sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.5 Within the construction sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R5.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R5.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.6 Within the retail and motor trade and repair services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R15.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R15.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.7 Within the wholesale trade, commercial agents and allied services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R5.00 million and 10 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R5.00 million and 10 employees

respectively, the measured enterprise will be measured according to the Generic Scorecard.

- 13.2.8 Within the catering, accommodation and other trades sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 100 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 100 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.9 Within the transport, storage and communications sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.10 Within the Finance and Business Services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 50 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 50 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.
- 13.2.11 Within the community, social and personal services sector, in order to be defined as a QSE, the measured enterprise's total annual turnover and number of total full-time equivalent of paid employees must be less than R10.00 million and 100 employees respectively. If either the total annual turnover or number of total full-time equivalent of paid employees is greater than R10.00 million and 100 employees respectively, the measured enterprise will be measured according to the Generic Scorecard.

## Annexe 1000-A: Model Qualifying Small Enterprise Scorecard

BEE Elements	Code Ref	Weighting	Indicators	Indicator Weighting	10 year compliance target
Ownership	BEE 1100	20%	Exercisable Voting Rights by black people	5%	25.% + 1 vote
			Economic Interest in the Enterprise to which Black people are entitled	7%	25%
			Ownership Fulfilment	1%	No restrictions
			Net Equity Value	7%	10% of the Target (Year 1) 20% of the Target (Year 2) 40% of the Target (Year 3,4), 60% of the Target (Year 5,6) 80% of the Target (Year 7,8) 100% of the Target (Year 9,10)
			Bonus Points: Involvement in the ownership of the Enterprise of: - Black Women and/or - Broad-based Ownership Schemes	3%	15%
Management Control	BEE 1200	20%	Black representation at Owner-Manager level;	20%	25,1% Owner-Manager Representation,
			Bonus Points: Black Women representation at Owner-Manager	2%	10%
Employment Equity	BEE 1300	20%	Black representation at Manager-Controller level	6%	40%
			Black women representation at Manager-Controller level	6%	20%
			Black employees as a percentage of total employees	4%	70%

			Black women as a percentage of total employees	4%	35%
Skills Development	BEE 1400	20%	Application submitted to the National Skills Fund	5%	Yes
			Quantifiable skills development spend on black employees in addition to Skills Development Levy as a percentage of the Leviable Amount (including amount spent on learnerships)	15%	2%
Preferential Procurement	BEE 1500	20%	BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels or Deemed Micro Enterprise Recognition Levels as a percentage of Total Measured Procurement Spend	20%	50%
Enterprise Development	BEE 1600	20%	Enterprise development contributions made by the Qualifying Small Enterprise as a percentage of EBITDA	20%	2%
Residual Element	BEE 1700	20%	Qualifying Residual Contributions made by the Enterprise measured as a percentage of net profit after tax	20%	2%



## Annexe 1000-B: Qualifying Small Enterprise Identification Table

Sector or sub-sectors in accordance with the Standard Industrial Classification	Size or class	Total full-time equivalent of paid employees	Total annual turnover	Scorecard to comply with Exemption status
		Less than	Less than	
Agriculture	Medium	100	R 4.00 m	Generic Scorecard
	Small	50	R 2.00 m	Qualifying Small Enterprise
	Very small	10	R 0.40 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Mining and Quarrying	Medium	200	R30.00 m	Generic Scorecard
	Small	50	R 7.50 m	Qualifying Small Enterprise
	Very small	20	R 3.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Manufacturing	Medium	200	R40.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	20	R 4.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Electricity, Gas and Water	Medium	200	R40.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	20	R 4.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Construction	Medium	200	R20.00 m	Generic Scorecard
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	20	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Retail and Motor Trade and Repair Services	Medium	100	R30.00 m	Generic Scorecard
	Small	50	R15.00 m	Qualifying Small Enterprise



Wholesale Trade, Commercial Agents and Allied Services	Very small	10	R 3.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
	Medium	100	R50.00 m	Generic Scorecard
	Small	50	R25.00 m	Generic Scorecard
	Very small	10	R 5.00 m	Qualifying Small Enterprise
Catering, Accommodation and other Trade	Micro	5	VAT registration limit	Exempted Micro Enterprise
	Medium	100	R10.00 m	Qualifying Small Enterprise
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	10	R 1.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
Transport, Storage and Communications	Medium	100	R20.00 m	Generic Scorecard
	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	10	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
	Medium	100	R20.00 m	Generic Scorecard
Finance and Business Services	Small	50	R10.00 m	Qualifying Small Enterprise
	Very small	10	R 2.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
	Medium	100	R10.00 m	Qualifying Small Enterprise
	Small	50	R 5.00 m	Qualifying Small Enterprise
Community, Social and Personal Services	Very small	10	R 1.00 m	Qualifying Small Enterprise
	Micro	5	VAT registration limit	Exempted Micro Enterprise
	Medium	100	R10.00 m	Qualifying Small Enterprise
	Small	50	R 5.00 m	Qualifying Small Enterprise
	Very small	10	R 1.00 m	Qualifying Small Enterprise



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

**CODE 1100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL ENTERPRISES**

**STATEMENT 1100: THE RECOGNITION OF OWNERSHIP FOR QUALIFYING SMALL  
ENTERPRISES**

Issued under section 9 of the Broad-Based Black Economic Empowerment Act 53 of 2003

**Arrangement of this Statement**

<b>Para</b>	<b>Subject</b>	<b>Page</b>
1	Definitions.....	1
2	Interpretation of this Statement.....	2
3	Application of this Statement .....	2
4	Objectives of this Statement .....	3
5	Statement of Principle.....	3
6	Ownership Scorecard .....	4
7	Key measurement principles.....	4

**1 DEFINITIONS**

In this Statement, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "black people" has the meaning defined in Code 1000 Statement 1000;
- 1.2 "black women" means black people who are women;
- 1.3 "Broad-Based Ownership Scheme" means a collective ownership scheme constituted with the view to facilitating the participation of specified natural persons in the benefits flowing from the ownership by that scheme or by its fiduciaries of an Equity Interest in an Enterprise measured in accordance with Code 100 Statement 100,
  - 1.3.1 Broad-Based Ownership Schemes participating in the ownership of Qualifying Small Enterprises are not obliged to comply with the requirement specified in Annexe 100A of Code 100 Statement 100;
- 1.4 "Deemed Participant" means a natural person entitled to receive a:

- 1.4.1 distribution; or
- 1.4.2 benefit;
- 1.4.3 from a Broad-Based Ownership Scheme;
- 1.5 "Economic Interest" means the entitlement of black people to dividends, capital gains and other economic rights of shareholders, measured in accordance with Code 100 Statement 100;
- 1.6 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.7 "Net Equity Interest" The accumulated net economic interest in the hands of the black shareholders, after the deduction of monies owed by these black shareholders, measured in accordance with Code 100 Statement 100;
- 1.8 "Ownership Fulfilment" refers to any conditions that might prevent the black shareholder from achieving his/her full net equity interest.
- 1.9 "QSE Ownership Scorecard" means the scorecard in paragraph 5;
- 1.10 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.11 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended or substituted; and
- 1.12 "Voting Right" means the Control of the Enterprise, through the exercise of voting rights at shareholder meetings, measured in accordance with Code 100 Statement 100.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the ownership Element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the ownership Element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.

#### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Ownership Scorecard

#### 5 STATEMENT OF PRINCIPLE

- 5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Ownership Scorecard based upon ownership contributions made by them.
- 5.2 In determining the nature of the ownership contribution made by Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and
  - 5.2.1 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of ownership contribution identified in the QSE Ownership Scorecard or the manner of calculation of those calculations in the QSE Ownership Scorecard, regard must be had to the principles outlined in the statements in Code 100.
- 5.3 Code 1000 Statement 1000 specifically permits Qualifying Small Enterprises to elect which 5 of the 7 elements of broad-based black economic empowerment specified in that statement, they wish to be measured in accordance with.
- 5.4 Notwithstanding the statement referred to in paragraph 5.3 a Qualifying Small Enterprise electing to be measured in terms of this statement, will be entitled to include its full score under the QSE Ownership Scorecard at a multiple of 1.25 included in its Qualifying Small Enterprise Scorecard, provided that the enterprise scores a minimum of 20 points (including bonus points) for ownership, before the application of this multiple.
- 5.5 Qualifying Small Enterprises are entitled to receive a maximum of 3 Bonus points on the QSE Ownership Scorecard if they can demonstrate that:
  - 5.5.1 black women; or
  - 5.5.2 black Deemed Participants in broad-based schemes,are entitled to 15% of the Economic Interest of that Measured Enterprise, measured using the Flow-Through Principle (and specifically excluding the Modified Flow-Through, and the Control principles).

## 6 OWNERSHIP SCORECARD

The following table represents the criteria and method for deriving a score for ownership in terms of this statement:

Category	Ownership criteria	Weighting points	Compliance Target
Voting rights:			
5.1	Exercisable Voting Rights in the Enterprise in the hands of black people	5	25%+1 vote
Economic interest:			
5.2	Economic interest in the Enterprise to which black people are entitled	7	25%
Realisation points:			
5.3	Ownership fulfilment	1	Yes
5.4	Net Equity Interest	7	25%
5.4..1	20% of the Target in Years 1-2		
5.4..2	40% of the Target in Years 3-4		
5.4..3	60% of the Target in Years 5-6		
5.4..4	80% of the Target in Years 7-8		
5.4..5	100% of the Target in Years 9-10		
Bonus points:			
	Involvement in the ownership of the Enterprise of: Black Women and/or Broad-based Ownership Schemes	3	15%

## 7 KEY MEASUREMENT PRINCIPLES

7.1 In determining the level of the entitlement of black people to participate in the Economic Interest and Exercisable Voting Rights of a Measured Enterprise, the following Principles must be applied consistently:

- 7.1.1 the Flow - Through Principle or the Modified Flow-Through Principle; and
- 7.1.2 the Control Principle.

- 7.2 The Flow-Through Principle referred to in paragraph 7.1.1, traces ownership measurement through the chain of ownership to the black natural persons(s) and
- 7.2.1 the Modified Flow-Through Principle referred to in paragraph 7.1.1, allows for the participation of non-BEE funders at one tier of ownership.
- 7.2.1.1 A measured enterprise can elect to apply the modified flow-through principle at any tier in a chain of ownership, but limited to one tier only.
- 7.3 The Control Principle referred to in paragraph 7.1.2 is applied in a chain of ownership to allow for the recognition of voting rights, or legal, ownership by the ultimate black shareholder(s) of the company. When this is applied during the calculation of the legal ownership, all the entities in the chain of ownership with over 50% black voting rights are considered to be 100 % black.
- 7.4 The following diagrams indicate the manner of calculating the effective black ownership in a measured company with four tiers of ownership using the principles referred to in paragraph 7.1.

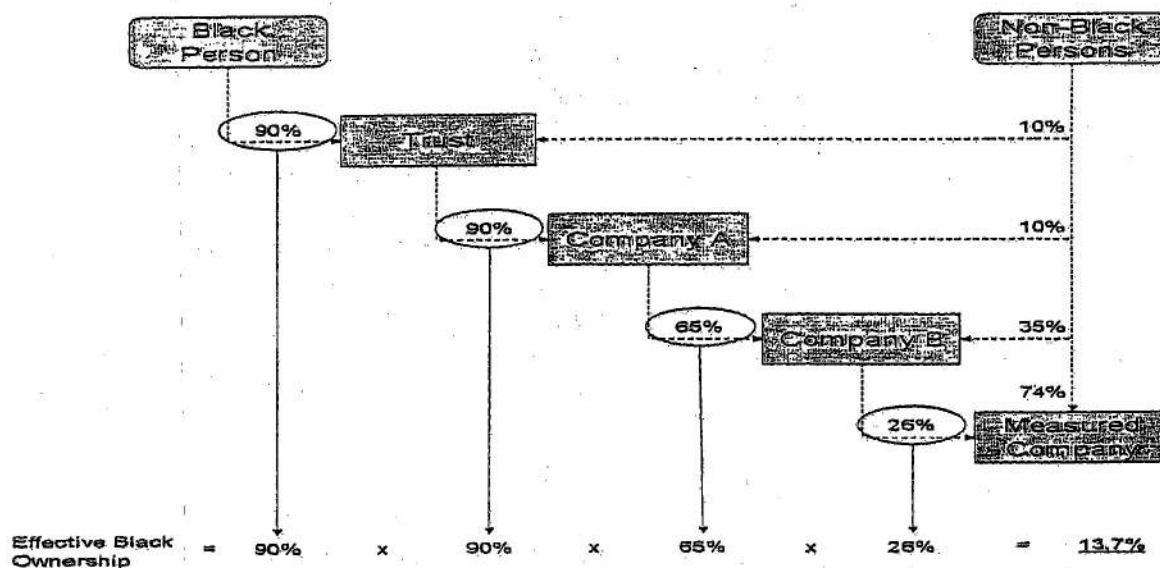


Figure 100-1: Illustration of Flow-Through Principle: The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership".



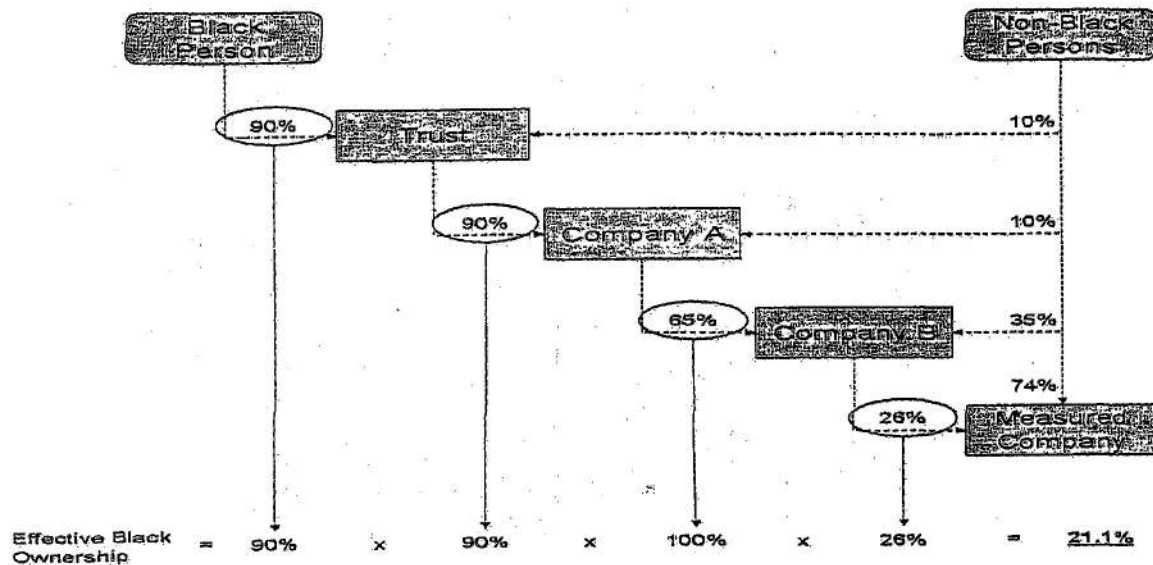
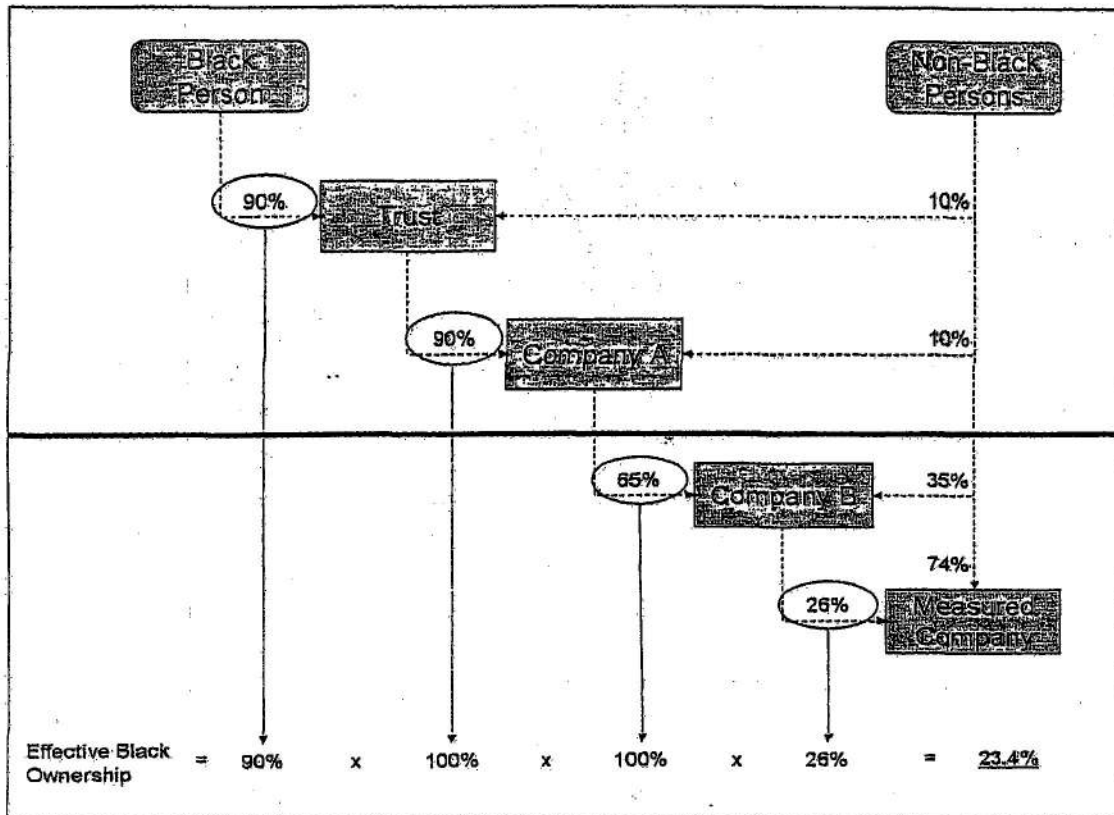
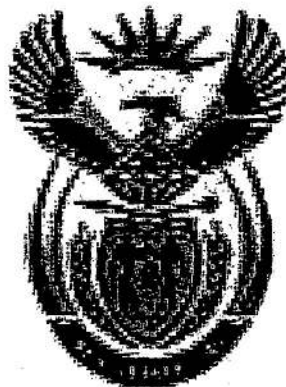


Figure 100-2: Illustration of Modified Flow-Through Principle: The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership", with the exception of the black majority owned companies (Company A and Company B) where one of those companies is treated as if it were 100% owned by black people. Measured Enterprises are entitled to choose which black majority owned company will benefit from the Modified Flow-Through Principle where more than one such company exists in the chain of ownership.



**Figure 100-3: Illustration of Control Principle:** The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership", with the exception of the black majority controlled companies (Company A and Company B) where each of those companies are treated as if they were 100% controlled by black people.



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

**CODE 1200: MEASUREMENT OF THE MANAGEMENT AND CONTROL ELEMENT OF  
BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

**STATEMENT 1200: THE GENERAL RECOGNITION OF MANAGEMENT CONTROL FOR  
QUALIFYING SMALL ENTERPRISES**

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

**Arrangement of this Statement**

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	2
3 Application of this Statement .....	3
4 Objectives of this Statement.....	3
5 Statement of Principle.....	3

**1 DEFINITIONS**

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "black women" means black people who are women;
- 1.2 "Enterprise" has the meaning defined in Code 1000, Statement 1000;
- 1.3 "Executive Manager " means a manager who falls within the definition of "executive director" as specified in the King Report;
- 1.4 "King Report" means the King Report on Corporate Governance for South Africa 2002 authored by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa;
- 1.5 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.6 "Occupational Levels" means the occupational levels specified in Form EEA9 gazetted as a regulation under the Employment Equity Act,
- 1.7 "Other Top Management" means Employees of a Measured Entity, other than Senior

Top Management who report directly to the Chief Executive Officer of that Measured Entity and are appointed to undertake the day to day management of that Measured Entity and who are actively involved in the development and/or implementation of the Measured Entity's strategy insofar as it relates to their area of responsibility. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management

- 1.8 **"Owner-Manager"** means an individual who holds equity representing at least 5% of all equity in the Measured Enterprise (both in relation to voting rights and economic interest as referred to in Code 1100 Statement 1100) and who is also an Executive Manager.
- 1.9 **"Senior Top Management"** means Employees of an Enterprise who report directly to the Chief Executive Officer and/or the Board of that Enterprise and are appointed to undertake the day to day management of that Enterprise and who have individual responsibility for the overall management and for the financial management of that Enterprise and who are actively involved in the development and/or implementation of the Enterprise's strategy. Common examples of Senior Top Management include, without limitation, chief executive officers, chief operating officers and chief financial officers. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management;
- 1.10 **"QSE Management Control Scorecard"** means the scorecard in paragraph 6;
- 1.11 **"Qualifying Small Enterprise Scorecard"** means the balanced BEE scorecard included in Annexe 1000-A of Code 1000, Statement 1000
- 1.12 **"Qualifying Small Enterprise"** has the meaning defined in Code 1000 Statement 1000;
- 1.13 **"the Act"** means the Broad-Based Black Economic Empowerment Act of 2003 as amended or substituted; and
- 1.14 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

### 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the management control element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the management control element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.

### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Management Control Scorecard

### 5 STATEMENT OF PRINCIPLE

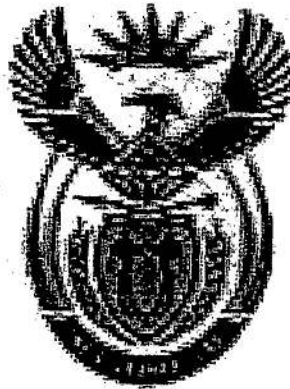
- 5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Management Control Scorecard based upon management control contribution made by them.
- 5.2 In determining the nature of the management control contributions made Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and
- 5.2.1 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of management control contribution identified in the QSE Management Control Scorecard, regard must be had to the principles outlined in the statements in Code 200; and
- 5.2.2 if there is any uncertainty or lack of specificity in this statement as to the manner of calculation of those calculations in the QSE Management Control Scorecard, regard must be had to the calculation methodology applicable to Other Top Management (black people) and Other Top Management (black women) in the Code 200 Statement 200, *mutatis mutandis* to the category of Owner Manager and the targets for black and black women Ownership Manager participation in this statement.

**6 QSE Management Control Scorecard**

The following table represents the methodology used for the purposes of deriving a score for management control in terms of this Statement:

Management control criteria	Weighting points	Compliance Target
black representation at Owner Manager level.	20%	25,1% Owner Manager Representation.
Bonus Points: black women representation at Owner Manager level	2%	10%





REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

# CODE 1300: MEASUREMENT OF THE EMPLOYMENT EQUITY ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL ENTERPRISES

## STATEMENT 1300: THE RECOGNITION OF EMPLOYMENT EQUITY CONTRIBUTIONS FOR QUALIFYING SMALL ENTERPRISES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para	Subject	Page
1	Definitions.....	1
2	Interpretation of this Statement.....	2
3	Application of this Statement .....	2
4	Objectives of this Statement .....	2
5	Statement of Principle.....	3
6	QSE Employment Equity scorecard.....	3

### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "Act" means the Broad Based Black Economic Empowerment Act, Act 53 of 2003;
- 1.2 "black women" means black people who are women;
- 1.3 "Element" shall have the same meaning as defined in Code 1000 Statement 1000;
- 1.4 "employee" bears the meaning as defined in the Employment Equity Act;
- 1.5 "Enterprise" shall have the same meaning as defined in Code 1100 Statement 1100;
- 1.6 "Manager Controller" means Employees of a Measured Entity who are appointed by the Participants of that Measured Entity to undertake the day-to-day management of that Measured Entity. For the avoidance of doubt, Manager Controller may include persons in the occupational levels of top and senior management as well as the occupational level of professionally qualified, experienced specialists and mid-management as specified in form

EEA9 issued under the Employment Equity Act;

- 1.7 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.8 "Measured Entity" means an Enterprise subject to measurement under the Codes;
- 1.9 "Qualifying Small Enterprise" means an enterprise which qualifies for measurement under the Qualifying Small Enterprise Scorecard, as identified in Annexe 1000-B of Statement 1000
- 1.10 "QSE Employment Equity Scorecard" means the scorecard in paragraph 6;
- 1.11 "Qualifying Small Enterprise Scorecard" means the balanced BEE scorecard included in Annexe 1000-A of Code 1000, Statement 1000
- 1.12 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.13 "the Employment Equity Act" means the Employment Equity Act of 1998; and
- 1.14 "the Employment Equity Scorecard" means the scorecard used for the measurement of employment equity contributions in this statement.

## **2 INTERPRETATION OF THIS STATEMENT**

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## **3 APPLICATION OF THIS STATEMENT**

- 3.1 This statement is to be used in the measurement of the employment equity element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the employment equity element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.

## **4 OBJECTIVES OF THIS STATEMENT**

The objective of this statement is to specify the QSE Employment Equity Scorecard

## 5 STATEMENT OF PRINCIPLE

5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Employment Equity Scorecard based upon employment equity contributions made by them.

5.1.1 In determining the nature of the employment equity contributions made by Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and

5.1.2 If there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of employment equity contribution identified in the QSE Employment Equity Scorecard or the manner of calculation of those calculations in the QSE Employment Equity Scorecard, regard must be had to the principles outlined in the statements in Code 300.

## 6 QSE EMPLOYMENT EQUITY SCORECARD

The following table represents the criteria used for the purposes of deriving a score for employment equity in terms of this statement:

Criteria	Weighting points	Compliance targets
6.1 Black representation at Manager-Controller level	6	40%
6.2 Black women representation at Manager-Controller level	6	20%
6.3 Black employees as a percentage of total employees	4	70%
6.4 Black women as a percentage of total employees	4	35%



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

# CODE 1400: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL ENTERPRISES

## STATEMENT 1400: THE RECOGNITION OF SKILLS DEVELOPMENT FOR QUALIFYING SMALL ENTERPRISES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para	Subject	Page
1	Definitions.....	1
2	Interpretation of this Statement.....	2
3	Application of this Statement .....	2
4	Objectives of this Statement .....	3
5	Statement of Principle.....	3
6	The QSE Skills Development Scorecard.....	3

### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "employee" bears the meaning as defined in the Employment Equity Act;
- 1.2 "Learnerships" refer to the skills development programs approved by the relevant SETA having jurisdiction over each of the Measured Enterprise's spheres/areas of operation and which are fully certified in accordance with the National Qualifications Framework maintained in terms of South African Qualifications Authority Act,
- 1.3 "Leviable Amount" bears the meaning as defined in the Skills Development Levies Act of 1999 as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act of 1962;
- 1.4 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;

- 1.5 "QSE Skills Development Scorecard" means the scorecard in paragraph 6;
- 1.6 "Qualifying Small Enterprise Scorecard" means the balanced BEE scorecard included in Annexe 1000-A of Code 1000, Statement 1000
- 1.7 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.8 "Skills Development Spend" comprises the amount of money that a Measured Entity spends on skills development that is over and above any of the skills development levy payable in accordance with the Skills Development Levies Act determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act of 1962; and
- 1.8.1 For the avoidance of doubt, Skills Development Spend includes the cost of maintaining learnerships;
- 1.9 "the Act" means the Broad-Based Black Economic Empowerment Act of 2003 as amended or substituted;
- 1.10 "the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement; and
- 1.11 "the Employment Equity Act" means the Employment Equity Act of 1998, as amended or substituted.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the skills development element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the skills development element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.



#### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Skills Development Scorecard

#### 5 STATEMENT OF PRINCIPLE

5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Skills Development Scorecard based upon skills development contributions made by them.

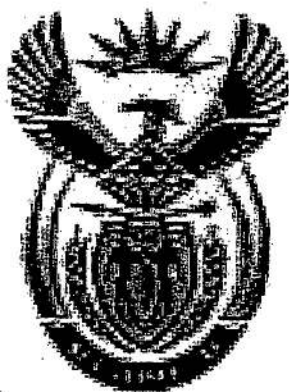
5.2 In determining the nature of the skills development contributions made by Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and

5.2.1 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of skills development contribution identified in the QSE Skills Development Scorecard or the manner of calculation of those calculations in the QSE Skills Development Scorecard, regard must be had to the principles outlined in the statements in Code 400.

#### 6 THE QSE SKILLS DEVELOPMENT SCORECARD

The following table represents the criteria used for the purposes of deriving a score for skills development in terms of this statement:

Criteria	Weighting points	Compliance Target
6.1 Application submitted to the National Skills Fund	5	yes
6.2 Quantifiable Skills Development Spend on black employees in addition to Skills Development Levy as a percentage of the Leviable Amount.	15	2%



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

**CODE 1500: MEASUREMENT OF THE PREFERENTIAL PROCUREMENT ELEMENT OF  
BROAD-BASED BLACK ECONOMIC EMPOWERMENT FOR QUALIFYING SMALL  
ENTERPRISES**

**STATEMENT 1500: THE RECOGNITION OF PREFERENTIAL PROCUREMENT  
CONTRIBUTIONS FOR QUALIFYING SMALL ENTERPRISES**

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

**Arrangement of this Statement**

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	2
3 Application of this Statement .....	2
4 Objectives of this Statement.....	3
5 Statement of Principle.....	3
6 QSE Preferential Procurement Scorecard .....	3
7 Measured Procurement Spend .....	3
8 Calculation of BEE Procurement Spend .....	6
9 The calculation of preferential procurement contributions to BEE .....	6

**1 DEFINITIONS**

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 "BEE Procurement Recognition Level" means the percentage BEE Procurement Recognition Levels as determined by reference to the mechanism for determining that level as set out in Code 1000 Statement 1000; and

- 1.1.1 in relation to Exempted Micro Enterprises , a deemed BEE Procurement Recognition

of 100% and BEE Status of Level 4 Contributor as contemplated in Code 1000 Statement 1000;

- 1.2 "BEE Procurement Spend" is Total Measured Procurement Spend, multiplied by the BEE Procurement Recognition Level of the supplier;
- 1.3 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.4 "QSE Preferential Procurement Scorecard" means the scorecard in paragraph 6;
- 1.5 "Qualifying Small Enterprise Scorecard" means the balanced BEE scorecard included in Annexe 1000-A of Code 1000, Statement 1000;
- 1.6 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.7 "Supplier" means any supplier or service provider to a Measured Entity, regardless of whether such supplier or service provider may be a Qualifying Small Enterprise or an Exempted Micro Enterprise, provided that a portion of the supply or service provision made by that supplier or service provider falls within the definition of Measured Procurement Spend;
- 1.8 "the Act" means the Broad-based Black Economic Empowerment Act 53 of 2003;
- 1.9 "the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement; and
- 1.10 "Total Measured Procurement Spend" is the sum total value of items included in the calculation of Measured Procurement spend as contemplated in paragraph 7

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the preferential procurement element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the preferential procurement element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the

Minister, by notice in a gazette.

#### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Preferential Procurement Scorecard

#### 5 STATEMENT OF PRINCIPLE

5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Preferential Procurement Scorecard based upon preferential procurement contributions made by them.

5.1.1 In determining the nature of the preferential procurement contributions made by the Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and

5.1.2 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of preferential procurement contribution identified in the QSE Preferential Procurement Scorecard or the manner of calculation of those calculations in the QSE Preferential Procurement Scorecard, regard must be had to the principles outlined in the statements in Code 500.

#### 6 QSE PREFERENTIAL PROCUREMENT SCORECARD

The following table represents the criteria for the purposes of deriving a score for preferential procurement in terms of this statement:

Criteria	Weighting points	Compliance target
BEE Procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	20%	50%

#### 7 MEASURED PROCUREMENT SPEND

7.1 For the purpose of this statement, the following items are included in the calculation of Measured Procurement spend:

7.1.1 Procured goods and services that comprises the cost of sales of the Measured Entity,

7.1.2 Procured goods and services that comprises the operational expenditure of the

## Measured Entity;

- 7.1.3 Goods and services procured from suppliers that enjoy a monopolistic position
- 7.1.4 Capital expenditure incurred by the Measured Entity;
- 7.1.5 Goods and services procured from organs of state and public entities;
- 7.1.6 Procurement on behalf of a third party or a client, where the cost of that procurement is included as an expense in the Measured Entity's annual financial statements;
- 7.1.7 Payment to independent contractors and to labour brokers for services provided by individuals who are not employees of the Measured Entity;
- 7.1.8 Goods and services procured for the purpose of implementing BEE initiatives, including without limitation, procurement in relation to skills development, enterprise development, as well as initiatives included under residual element of BEE;
- 7.1.9 Goods and services procured from a non-South African source and all imported goods and services procured; and
- 7.1.10 Goods and services procured from subsidiaries or holding companies of the Measured Entity, the terms "subsidiary" and "holding company" to be interpreted in accordance with the Companies Act 61 of 1973.
- 7.1.11 Fund management costs for the administration of pension funds, provident funds, other post retirement funding schemes, medical aid schemes or insurance products
- 7.2 Notwithstanding the provisions of paragraph 7.1, the following items are **excluded** in the calculation of Measured Procurement spend:
  - 7.2.1 Any amount payable to any person, which represents a lawful tax or levy imposed by an organ of state duly authorized to impose such tax or levy. For the avoidance of doubt, any rates imposed by a municipality or other local government is excluded;
  - 7.2.2 Any amount payable to an employee as an element of their basic salary or wage.
  - 7.2.3 Contributions made by an employer on behalf of its employees towards:
    - 7.2.3.1 any pension fund, provident fund or other post retirement funding scheme ;or
    - 7.2.3.2 any medical aid or insurance product .
  - 7.2.4 For the avoidance of doubt, only the portion that relates to fund management costs, where the administrators of such pension funds, provident funds, other post retirement



funding schemes, medical aid schemes or insurance products referred to in paragraph 7.2.3 are able to distinguish between the portion of such contributions which relate to fund management costs and the remainder of such contributions, is included within the Measured Procurement Spend,

- 7.2.5 Any emolument or similar payment paid to a director of a Measured Entity;
- 7.2.6 Procurement of goods and services by a Measured Entity on behalf of a third party, where such procurement is not represented as an expense in the annual financial statements of the Measured Entity;
- 7.2.7 Investments in or loans to an Associated Enterprise;
- 7.2.8 Investments in or loans qualifying for recognition under any statement under Code 1600;
- 7.2.9 Donations, investments or loans qualifying for recognition under any statement under Code 1700;
- 7.2.10 Subject to a maximum level of exclusion of which is by value equivalent to 25% Total Procurement after exclusion of the items in paragraphs 7.2.1 to 7.2.7, any of the following imported goods and services:
  - 7.2.10.1 imported capital goods or components for value-added production in South Africa provided that:
    - 7.2.10.1.1 there is no existing local production of such capital goods or components; and
    - 7.2.10.1.2 the importation of such capital goods or components facilitates further value-added production within South Africa;
  - 7.2.10.2 imported goods and services other than as contemplated in paragraph 7.2.10.1 if there is no local production of such goods or services. For the avoidance of uncertainty, the following cannot be the sole grounds for excluding imported goods and services from Measured Procurement Spend:
    - 7.2.10.2.1 where the only difference between the imported goods or services and the locally produced goods or services is cost;
    - 7.2.10.2.2 where the imported goods or services carry a brand different to the locally produced goods or services; or
    - 7.2.10.2.3 where the imported goods or services have different technical specifications to



the locally produced goods or services, but where such technical specifications have no direct impact on the value of the goods and services to the Measured Entity.

## 8 CALCULATION OF BEE PROCUREMENT SPEND

8.1 BEE Procurement Spend is calculated as the sum of the value of the Procurement Items included in the calculation of Measured Procurement spend as contemplated in paragraph 7. Multiplied by the BEE Procurement Recognition Level or Deemed Micro Enterprise Recognition Level (as the case may be) of the Supplier.

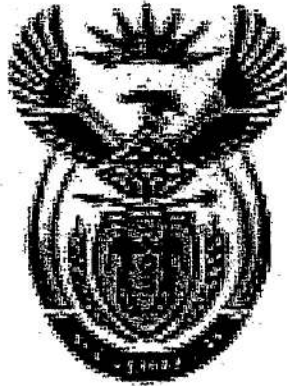
8.2 BEE Procurement Spend is calculated as follows:

$A = \sum (B \times C)$	
Where	
A is the calculated total BEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of B and C in respect of each Supplier of the Measured Entity included in the calculation of Measured Procurement spend as contemplated in paragraph 7	
B is the value of Procurement Items included in the calculation of Measured Procurement spend as contemplated in paragraph 7, Procured from each Supplier of the Measured Entity	
C is the BEE Procurement Recognition Level or Deemed Micro Enterprise Recognition Level (as the case may be) of each such Supplier of the Measured Entity	

## 9 THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO BEE

A Measured Entity's score for preferential procurement contributions to BEE under the preferential procurement scorecard shall be calculated as follows:

$A = \frac{B}{C} \times D$	
Where	
A is the calculated preferential procurement score for the Measured Entity.	
B is the total BEE Procurement Spend of the Measured Entity calculated in terms of paragraph 8 as a percentage of Total Measured Procurement Spend of that Measured Entity	
C is the preferential procurement as specified in paragraph 6	
D is the Weighting points as specified in paragraph 6	



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issue the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

## CODE 1600: MEASUREMENT OF THE ENTERPRISE DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 1600: THE RECOGNITION OF ENTERPRISE DEVELOPMENT CONTRIBUTIONS FOR QUALIFYING SMALL ENTERPRISES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para	Subject	Page
1	Definitions.....	1
2	Interpretation of this Statement.....	2
3	Application of this Statement .....	3
4	Objectives of this Statement .....	3
5	Statement of Principle.....	3
6	The Enterprise Development scorecard.....	3

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

##### 1.1 "Beneficiary Entity" means:

- 1.1.1 a micro enterprise which is an Exempted Micro Enterprise as defined in Code 1000 Statement 1000;
- 1.1.2 an Enterprise which is 50% or more owned by black people and which is a Level One to Six contributor to BEE as determined by reference to Code 1000 Statement 1000;
- 1.1.3 an Enterprise which is a Level One to Three BEE contributor to BEE as determined by reference to Code 1000 Statement 1000, regardless of the black ownership status of the Enterprise;
- 1.1.4 a Qualifying Small Enterprise which is 50% or more owned by black people and which is a Level One to Level Six contributor to BEE as determined in Code 1000 Statement

1000; or

- 1.1.5 For the purposes of this definition, the term **"50% owned by black people"** is to be interpreted as meaning an Enterprise in which:
- 1.1.5.1 black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise; and
  - 1.1.5.2 that enterprise has achieved the full seven points under the net equity interest component of the ownership scorecard,
  - 1.1.5.3 the "economic interest," "exercisable voting rights" and "net equity interest" referred to in paragraph 1.1.5.1 must be measured in accordance with Code 1100 Statement 1100; and
  - 1.1.5.4 the modified flow-through, control and exclusions principles shall not be applied;
- 1.2 **"EBITDA"** means earnings before income tax, depreciation and amortisation interpreted in accordance with South African Generally Accepted Accounting Practice;
- 1.3 **"Measured Enterprise"** means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.4 **"Qualifying Enterprise Development Contributions"** means Contributions actually initiated and implemented in favour of Beneficiary Entities by a Measured Entity with the specific objective of assisting and/or accelerating the development, sustainability and ultimate financial and operational independence of such Beneficiary Entities through the expansion of those Beneficiary Entities' financial and/or operational capacity; and
- 1.4.1 measured in accordance with Code 600, Statement 600
- 1.5 **"QSE Enterprise Development Scorecard"** means the scorecard in paragraph 6;
- 1.6 **"Qualifying Small Enterprise"** has the meaning defined in Code 1000 Statement 1000; and
- 1.7 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

### 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the enterprise development element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the enterprise development element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.

### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Enterprise Development Scorecard

### 5 STATEMENT OF PRINCIPLE

- 5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Enterprise Development Scorecard based upon enterprise development contributions made by them.
- 5.1.1 In determining the nature of the enterprise development contribution made by Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and
- 5.1.2 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of enterprise development contribution identified in the QSE Enterprise Development Scorecard or the manner of calculation of those calculations in the QSE Enterprise Development Scorecard, regard must be made to the principles outlined in the statements in Code 600.

### 6 THE ENTERPRISE DEVELOPMENT SCORECARD

The following table represents the criteria and methodology used for the purposes of deriving a score for enterprise development in terms of this statement:

Criteria	Weighting Points	Compliance Target
Qualifying Enterprise Development Contributions made by the Qualifying Small Enterprise as a percentage of EBITDA	20	2%



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

## CODE 1700: MEASUREMENT OF THE RESIDUAL ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

### STATEMENT 1700: THE RECOGNITION OF RESIDUAL CONTRIBUTIONS FOR QUALIFYING SMALL ENTERPRISES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	2
3 Application of this Statement .....	2
4 Objectives of this Statement.....	3
5 Statement of Principle.....	3
6 QSE residual contribution Scorecard.....	3

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

- 1.1 *"Corporate Social Investment" refers to an enterprise's contribution to society and community that are extraneous to its regular business activities. These interventions may include, but will not be limited to:*
- 1.2 Development Programmes for women, youth, people with disabilities, people living in rural areas and other target groups
  - 1.2.1 support of health and HIV/AIDS programmes in the community
  - 1.2.2 support for community education facilities; programmes at secondary and tertiary education level; bursaries and scholarships
  - 1.2.3 community training; skills development for unemployed; adult basic education and training in communities



- 1.2.4 which focuses on conservation, awareness, education and waste management
- 1.2.5 support of development programmes; development of new talent and
- 1.2.6 support of developmental programmes.
- 1.3 "Industry Specific Contribution" means the qualifying residual contributions that are unique to the industry in which enterprises operates. For the purposes of this statement an industry may be grouped in major divisions in accordance with the Standard Industrial Classification Coding System used by Statistic South Africa;
- 1.4 "Measured Enterprise" means the Qualifying Small Enterprise subject to measurement under this statement;
- 1.5 "Qualifying Residual Contributions" means monetary or non-monetary contributions actually initiated and implemented by a Measured Entity with the specific objective to facilitate access to the economy for Contribution Beneficiaries and is inclusive of, but not limited to, both socio-economic and industry specific contributions; determined as contemplated in Code 700 Statement 700
- 1.6 "QSE Residual Scorecard" means the scorecard in paragraph 6;
- 1.7 "Qualifying Small Enterprise" has the meaning defined in Code 1000 Statement 1000;
- 1.8 "the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003; and
- 1.9 "the Codes" means all Codes of Good Practice issues in terms of section 9 of the Act, including without limitation, this statement.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.

## 3 APPLICATION OF THIS STATEMENT

- 3.1 This statement is to be used in the measurement of the residual element of broad-based black economic empowerment for all Qualifying Small Enterprises.
- 3.2 Notwithstanding paragraph 3.1, this statement is not to be used in the measurement of the residual element of broad-based black economic empowerment in respect of an Enterprise particularly excluded from the provisions of this statement by the Minister, by notice in a gazette.

#### 4 OBJECTIVES OF THIS STATEMENT

The objective of this statement is to specify the QSE Residual Scorecard

#### 5 STATEMENT OF PRINCIPLE

5.1 Qualifying Small Enterprises are entitled to receive points on the QSE Residual Scorecard based upon residual contributions made by them.

5.2 In determining the nature of the residual contribution made by Qualifying Small Enterprises, those Enterprises should be guided by this statement read in conjunction with Code 1000 Statement 1000; and

5.2.1 if there is any uncertainty or lack of specificity in this statement as to the recognition of any specific type of residual contribution identified in the QSE Residual Scorecard or the manner of calculation of those calculations in the QSE Residual Scorecard, regard must be had to the principles outlined in the statements in Code 700.

#### 6 QSE RESIDUAL CONTRIBUTION SCORECARD

The following table represents the criteria and methodology used for the purposes of deriving a score for Qualifying Residual Contributions in terms of this statement:

Criteria	Weighting Points	Compliance Target
Qualifying Residual Contributions made by the Qualifying Small Enterprise measured as a percentage of net profit after tax, made to Corporate Social Investments and/or Industry Specific Contributions.	20%	2%



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT**

### **Section 9(5): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry hereby issues the following draft Code of Good Practice for public comments under section 9(3) of the Broad-Based Black Economic Empowerment Act 53 of 2003. Interested persons are invited to furnish the Minister with comments on this proposed code within 60 days of the date of publication.

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

### STATEMENT 103: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY MULTINATIONAL COMPANIES

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

Para Subject	Page
1 Definitions.....	1
2 Interpretation of this Statement.....	3
3 Application of this Statement .....	4
4 Objectives of this Statement .....	4
5 Key Measurement Principles .....	4
6 Recognition of Equity Equivalents.....	5
7 Sale of Offshore Equity Interests .....	6
8 Sale of South African Businesses or Assets by Multinational Businesses or South African Multinationals.....	7

#### 1 DEFINITIONS

In this statement, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act bears the same meaning, and:

1.1 "Acceptable Valuation Standard" means a valuation of:

1.1.1 an asset;

1.1.2 an Economic Interest;

1.1.3 a Local Multinational Enterprise; or

1.1.4 any other instrument or right which is relevant to measurement under this statement,

undertaken in accordance with normal valuation methods that represent standard market practice;

- 1.2 "BEE" means black economic empowerment;
- 1.3 "black people" shall have the meaning defined in Code 000 Statement 000;
- 1.4 "Economic Interest" shall have the meaning defined in Statement 100;
- 1.5 "Enterprise" shall have the meaning defined in Statement 100;
- 1.6 "Equity Equivalent" means an equity equivalent contribution made by a Local Multinational Enterprise of a Multinational Business in terms of an approved:
  - 1.6.1 public program or scheme of any government department, provincial government or local government in the Republic of South Africa which has been approved by the minister as entitling that Local Multinational Enterprise to indicative points under the Ownership Scorecard; or
  - 1.6.2 provided for in terms of a Sector Code gazetted in terms section 9 of the Act and Code 000 Statement 010 of the Codes;
- 1.7 "Equity Interest" shall have the meaning defined in Statement 100;
- 1.8 "Exercisable Voting Rights" shall have the meaning defined in Statement 100;
- 1.9 "Global Policy" means a globally and uniformly applied restriction upon the alienation of Equity in or the sale of businesses of the Multinational Affiliates of a Multinational Business imposed by that Multinational Business or by a regulator which has lawful jurisdiction over that Multinational Business or by any law of application to the Multinational Business. Where the Global Policy is imposed by a regulator or by law, such Global Policy must substantially have been in existence prior to the date of promulgation of the Act;
- 1.10 "Local Multinational Enterprise" means a South African based Enterprise which is a Multinational Affiliate of a Multinational Business or of a South African Multinational, it being recorded that a branch of an external company as defined in the Companies Act of 1973 shall constitute a Local Multinational Enterprise;
- 1.11 "Multinational Affiliate" means a business owned or controlled by a Multinational Business or a South African Multinational which operates in a particular country or in a particular region other than the country and/or region in which that Multinational Business

or South African Multinational maintains its headquarters;

- 1.12 **"Multinational Business"** means a business having its international headquarters in a jurisdiction other than the Republic of South Africa and which owns and/or controls a Local Multinational Enterprise as one of its Multinational Affiliates, provided that a Multination Business as herein defined shall not include a South African Multinational;
- 1.13 **"Net Equity Interest"** shall have the meaning defined in Statement 100;
- 1.14 **"Ownership Bonus Points"** refer to the points specified in paragraph 5.4 of the Ownership Scorecard;
- 1.15 **"Ownership Fulfilment"** shall have the meaning defined in Statement 100;
- 1.16 **"Ownership Scorecard"** means the scorecard used for the measurement of ownership Statement 100;
- 1.17 **"Participant"** shall have the meaning defined in Statement 100;
- 1.18 **"South African Multinational"** means any Enterprise which:
- 1.18.1 currently maintains its international headquarters in the Republic of South African and which maintains Multinational Affiliates in other jurisdictions; or
- 1.18.2 previously maintained its international headquarters in the Republic of South Africa and having moved those headquarters to another jurisdiction, now maintains a Local Multinational Enterprise in the Republic of South Africa as one of its Multinational Affiliates;
- 1.19 **"Statement 100"** means Code 100 Statement 100 issued in terms of section 9 of the Act;
- 1.20 **"Statement 101"** means Code 100 Statement 101 issued in terms of section 9 of the Act;
- 1.21 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003; and
- 1.22 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement.

## 2 INTERPRETATION OF THIS STATEMENT

This statement is to be interpreted in a manner that is consistent with the objectives of the Act, and those set out in paragraph 4.



### **3 APPLICATION OF THIS STATEMENT**

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of Multinational Businesses and South African Multinationals.

### **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 define the key measurement principles applicable to measurement of ownership contributions by Local Multinational Enterprises of Multinational Businesses and South African Multinationals;
- 4.2 provide for the recognition of Equity Equivalent contributions made by Multinational Businesses;
- 4.3 provide for the recognition of ownership contributions arising from sales of offshore Equity Interests;
- 4.4 provide for the recognition of ownership contributions arising from sales of businesses or assets by the Local Multinational Enterprises of Multinational Businesses or South African Multinationals; and
- 4.5 specify the approach to measurement of ownership contributions made by South African Multinationals.

### **5 KEY MEASUREMENT PRINCIPLES**

- 5.1 It is a fundamental principle of this statement that any contributions towards the ownership Element of broad-based black economic empowerment made by Multinational Businesses or South African Multinationals should be measured:
  - 5.1.1 against the value (measured using an Acceptable Valuation Standard) of the Local Multinational Enterprise of a Multinational Business or of a South African Multinational; or
  - 5.1.2 against the value (measured using an Acceptable Valuation Standard) of the South African operations of a South African Multinational maintaining its headquarters in the Republic of South Africa.
- 5.2 Contributions made by South African Multinationals maintaining a Local Multinational



Enterprise as one of their Multinational Affiliates and those made by Multinational Businesses which represent in value a specific percentage of the value of the Local Multinational Enterprise of such South African Multinationals or Multinational Businesses, will qualify for recognition under the Ownership Scorecard as notional ownership by black people of that Local Multinational Enterprise at an equivalent percentage.

- 5.3 Contributions made by South African Multinationals maintaining their international headquarters in the Republic of South Africa which represent in value a specific percentage of the value of their South African operations will qualify for recognition under the Ownership Scorecard as ownership by black people of that South African Multinational at an equivalent percentage.

## 6 RECOGNITION OF EQUITY EQUIVALENTS

- 6.1 The provisions of Statement 100 apply unchanged to the measurement of the ownership Element of broad-based black economic empowerment in respect of Local Multinational Enterprises. Local Multinational Enterprises will have to evidence the following requirements in order to qualify for equity equivalents:
- 6.1.1 the Multinational Business must own and control the entire Equity in the Local Multinational Enterprise;
  - 6.1.2 the Multinational Business must be subject to a Global Policy; and
  - 6.1.3 the Multinational Business will suffer substantial commercial harm if it were to implement transactions designed to give effect to the provisions of Statement 100.
- 6.2 The minister may from time to time, and in consultation with the sectoral line minister(s), premiers or other stakeholders in any government department, provincial government or local government approve certain specified public programs or schemes as entitling Local Multinational Enterprises of Multinational Businesses to Equity Equivalents. This recognition does not apply to any South African Multinationals.
- 6.3 To the extent that a Local Multinational Enterprise is entitled to receive indicative points on the Ownership Scorecard in accordance with an Equity Equivalent, those points shall be included in that Local Multinational Enterprise's Ownership Scorecard.
- 6.4 Any Local Multinational Enterprise shall be entitled, at any time, to make written representations to the minister for the recognition of Equity Equivalents.

- 6.5 The content of Equity Equivalents approved in accordance with a Sector Code as contemplated in Code 000 Statement 010 will be dealt with in such Sector Code.

## 7 SALE OF OFFSHORE EQUITY INTERESTS

- 7.1 Any South African Multinational maintaining its international headquarters outside of the Republic of South African and any Multinational Business shall be entitled to receive recognition for the sale of an Equity Interest to black Participants in:
- 7.1.1 any company interposed between the Local Multinational Enterprise and its ultimate holding company; or
- 7.1.2 its ultimate holding company
- 7.2 In order to facilitate the provisions of paragraph 7.1, a Local Multinational Enterprise shall be entitled to claim points in its Ownership Scorecard on the basis of notional participation by black Participants in that Local Multinational Enterprise based upon the sale of offshore Equity Interest as follows:
- 7.2.1 Economic Interest to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;
- 7.2.2 Exercisable Voting Rights to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;
- 7.2.3 Net Equity Interest and Ownership Fulfilment points arising from a sale of offshore Equity Interests shall be measured in compliance with the principles established in Statement 100, save that wherever reference is made to the measurement of the value of the "Measured Enterprise", that reference will be interpreted as relating to the value of the Local Multinational Enterprise; and
- 7.2.4 Ownership Bonus Points will be measured on the same basis as specified in Statement 100 as modified by reference to paragraph 7.2.1 above in respect of the measurement of Economic Interest.

- 7.3 Notwithstanding the provisions of paragraph 7.2, no points shall be claimable by the Local Multinational Enterprise under the Ownership Scorecard in respect of:
- 7.3.1 Exercisable Voting Rights arising from the sale of offshore Equity Interest unless the Exercisable Voting Rights in the Local Multinational Enterprise are irrevocably transferred to the black people owning that offshore Equity Interest for the continued duration of their ownership of that offshore Equity Interest; and
- 7.3.2 Economic Interest (including also derived points in respect of Net Equity Interest and Ownership Bonus Points) arising from the sale of offshore Equity Interest unless the black people owning that offshore Equity Interest are entitled to receive Economic Interest arising from offshore Equity Interest which are equivalent to or greater than those which would arise from an entitlement to share in the profitability of the Local Multinational Enterprise.

## **8 SALE OF SOUTH AFRICAN BUSINESSES OR ASSETS BY MULTINATIONAL BUSINESSES OR SOUTH AFRICAN MULTINATIONALS**

- 8.1 Any sale of any South African business or asset by a Multinational Business/ South African Multinational or its Local Multinational Enterprise (where applicable) shall be fully recognisable under Statement 101, save that any reference to the measurement of the value of the "Measured Enterprise" in Statement 101, shall for this purposes of this statement be interpreted as relating to the value of the Local Multinational Enterprise.

# Looking for out of print issues of Government and Provincial Gazettes

We can provide photocopies

## **Contact**

The National Library of South Africa,  
Pretoria Campus  
PO Box 397  
0001 PRETORIA

## **Physical address**

C/o Andries and Vermeulen Streets  
Entrance in Andries Street

## **Contact details**

Tel: (012) 321-8931  
Fax: (012) 325-5984  
E-mail: [infodesk@nlsa.ac.za](mailto:infodesk@nlsa.ac.za)

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531