



**REPABOLIKI YA AFERIKA BORWA**

**REPUBLIEK VAN SUID AFRIKA**

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

## **Section 9(1): Codes of Good Practice**

It is hereby notified that the Minister of Trade and Industry intends gazetting the following Code of Good Practice under section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003 in due course. This document is published for general information.

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

**STATEMENT 101: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS ARISING FROM  
SALES OF BUSINESSES/ASSETS IN QUALIFYING TRANSACTIONS**

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

**Arrangement of this Statement**

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**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 **"Adjustment Factor"** means the adjustment factor referred to in paragraph 7.1;
- 1.2 **"Associated Enterprise"** means an Enterprise with which a Measured Enterprise has concluded a Qualifying Transaction;
- 1.3 **"black people"** has the meaning defined in Code 000 Statement 000;
- 1.4 **"Deemed Current Value"** has the meaning assigned in Statement 100;
- 1.5 **"Economic Interest"** has the meaning assigned in Statement 100;
- 1.6 **"Equity Interest"** has the meaning assigned in Statement 100;
- 1.7 **"Enterprise"** has the meaning assigned in Statement 100;
- 1.8 **"Equivalency Percentage"** means a percentage ownership performance in an

Associated Enterprise arising from a Qualifying Transaction with a Measured Enterprise in respect of those of the elements in the Ownership Scorecard referred to in paragraph 7.2 and calculated in accordance with paragraph 7. The Equivalency Percentage may be applied by the Measured Enterprise in its own Ownership Scorecard as being a percentage of Equity Interest held by notional black owners in that Measured Enterprise;

- 1.9 **"Exercisable Voting Right"** has the meaning assigned in Statement 100 as applied to black people in an Associated Enterprise;
- 1.10 **"Measured Enterprise"** means an Enterprise subject to measurement under Statement 100;
- 1.11 **"Net Equity Interest"** has the meaning assigned in Statement 100 as applied to the Net Equity Interest of an Associated Enterprise;
- 1.12 **"Ownership Fulfilment"** has the meaning assigned in Statement 100;
- 1.13 **"Ownership Scorecard"** means the scorecard for ownership specified in Statement 100;
- 1.14 **"Participant"** has the meaning assigned in Statement 100 as it applies to a Participant in an Associated Enterprise;
- 1.15 **"Qualifying Transaction"** means the sale of a business or assets from a Measured Enterprise to an Associated Enterprise that meets the requirements set out in paragraph 5;
- 1.16 **"Statement 100"** means Code 100 Statement 100 issued in terms of section 9 of the Act;
- 1.17 **"Target"** means the Targets attributed to the various criteria in the Ownership Scorecard;
- 1.18 **"the Act"** means the Broad-Based Black Economic Empowerment Act of 2003;
- 1.19 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act;
- 1.20 **"the Generic Scorecard"** means the balanced BEE scorecard included in Code 000 Statement 000; and
- 1.21 **"Voting Right"** has the meaning assigned in Statement 100 as it applies to Voting Rights in an Associated Enterprise.

## 2 INTERPRETATION OF THIS STATEMENT

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**

This statement is to be used in the determination of the Equivalency Percentages attributable to a Measured Enterprise arising from the conclusion of Qualifying Transactions with Associated Enterprises.

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

The objectives of this statement are to define:

- 4.1 the mechanisms by which Equivalency Percentages may be attributable to a Measured Enterprise arising from the conclusion of a Qualifying Transaction; and
- 4.2 the Associated Enterprise Adjustment Factor to be applied to the calculation of the Equivalency Percentages arising from a Qualifying Transaction.

### **5 REQUIREMENTS OF A QUALIFYING TRANSACTION**

A Qualifying Transaction must:

- 5.1 result in:
  - 5.1.3 the creation of sustainable businesses or business opportunities for black people; and
  - 5.1.4 the transfer of specialised skills or productive capacity to black people; and
- 5.2 not results in unnecessary job-losses;
- 5.3 involve a separate Associated Enterprise which has:
  - 5.3.3 no unreasonable limitations with respect to its clients or customers;
  - 5.3.4 clients, customers or suppliers other than the Enterprise with which the Qualifying Transaction was undertaken; and
  - 5.3.5 no operational outsourcing arrangements with the initiating Enterprise that were not concluded at arms-length on a fair and reasonable basis.

### **6 KEY MEASUREMENT PRINCIPLES OF QUALIFYING TRANSACTIONS**

- 6.1 Equivalency Percentages may be attributed to a Measured Enterprise based on the level of black ownership in an Associated Enterprise with which a Qualifying Transaction has been undertaken.
- 6.2 The level of ownership in the Associated Enterprise must be measured:

6.2.3 separately; and

6.2.4 in accordance with 15 to 18 of Statement 100.

6.3 If a Measured Enterprise has claimed an Equivalency Percentage in its Ownership Scorecard, no points may be claimed by that Measured Enterprise from that Qualifying Transaction under the enterprise development Element of the Generic Scorecard.

## 7 MEASUREMENT PRINCIPLES

7.1 In order to determine the Equivalency Percentage, the Associated Enterprise Adjustment Factor must be calculated as follows:

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

Where

**A** is the Associated Enterprise Adjustment Factor

**B** is the valuation of the Associated Enterprise as at the date of measurement (after excluding the valuation of the contributions of all other Qualifying Transaction in that Associated Enterprise which were contributed by Enterprises other than the Measured Enterprise with any growth in the value of the Associated Enterprise pro-rated among all of the Enterprises making contributions)

**C** is the valuation of the Measured Enterprise as at the date of measurement.

7.2 In order to calculate the Equivalency Percentage in respect of the ownership element in:

7.2.3 paragraphs 5.1.1 and 5.1.2 of the Ownership Scorecard, the Adjustment Factor must be multiplied by the percentage that Exercisable Voting Rights in the hands of the applicable category of black people referred to in those paragraphs in the Associated Enterprise holds to the total of all Voting Rights held by all Participants of that Associated Enterprise divided by the Compliance Targets specified in paragraphs 5.1.1 and 5.1.2 of the Ownership Scorecard respectively;

7.2.4 paragraphs 5.2.1 to 5.2.3 of the Ownership Scorecard, the Adjustment Factor must be multiplied by the percentage that Economic Interest in the hands of the applicable category of black people referred to in those paragraphs in the Associated Enterprise holds to the total of all Economic Interest held by all Participants of that Associated

Enterprise divided by the Compliance Targets specified in paragraphs 5.2.1 and 5.2.3 of the Ownership Scorecard respectively; and

- 7.2.5 paragraph 5.3.2 of the Ownership Scorecard, the Associated Adjustment Factor will be multiplied by Deemed Current Value of the Associated Enterprise. For the avoidance of doubt, the Equivalency Percentage derived in terms of this paragraph 7.2.4 will be summed with the Deemed Current Value of the Measured Enterprise.
- 7.3 A Measured Enterprise is not entitled to receive any bonus points, as contemplated in paragraph 5.4.1 of the Ownership Scorecard, from an Associated Enterprise.
- 7.4 A Measured Enterprise claiming an Equivalency Percentage from a Qualifying Transaction with an Associated Enterprise, will only be entitled to claim the Ownership Fulfilment point referred to in paragraph 5.3.1 of the Ownership Scorecard if it can demonstrate that the conditions for the award of that point have been complied with by all of its own black Participants and all of the black Participants in all of its Associated Enterprises.
- 7.5 The Equivalency Percentage may only be attributed to the Measured Enterprise and may under no circumstances be transferred or attributed to a subsidiary (or similar related subsidiary Enterprise) of the Measured Enterprise.

## **Annexe 101-A: Cautions and Guidance to Persons Interpreting this Statement**

### **1 NON CIRCUMVENTION**

The term Qualifying Transaction is comprehensively defined in the statement. However, there is always a danger that Qualifying Transactions will be claimed in circumstances where the Associated Enterprise is a front for the Measured Enterprise. Associated Enterprises must be closely examined to ensure that they have substantial operational capacity in their own right.