

BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT

SECTION 9(1) CODES OF GOOD PRACTICE

SCHEDULE 1

INTERPRETATION AND DEFINITIONS

Part 1: Interpretation

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

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

Part 2: Definitions

In these Codes unless the context otherwise requires:

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

"BEE Procurement Recognition Level"	means the percentage BEE Procurement Recognition Levels as determined: (a) for Enterprises that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises, using statement 000; (b) for Qualifying Small Enterprises, using statement 800; and (c) for Exempted Micro-Enterprises, a deemed BEE Procurement Recognition of 100% and BEE Status of Level 4 Contributor under statement 800;
"BEE Status"	means the BEE status of a beneficiary of Enterprise Development Contributions as determined under: (a) Statement 800 for Qualifying Small Enterprises and Exempted Micro Enterprises; and (b) Statement 000 for all other Enterprises;
"Benefit Factor"	means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development and Socio Economic Development Contributions claimable under statement 600,700, 806 and 807;
"Benefit Factor Matrix"	means the Benefit Factor Matrix for Enterprise Development and Socio Economic Development Contributions annexed to statement 600,700, 806 and 807;
"Black designated groups"	(a) means unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practise on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under-developed areas.
"Black new entrants"	means black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in any other Entity which has a total value of more than R20.000,00000, measured using a standard valuation method;
"Black people"	has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent; or are citizens of the republic of South Africa by naturalisation: (a) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993; or (a) occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation before then;
"Broad-Based Ownership Scheme"	means a ownership scheme which meets the rules set out in Annexe 100B;
"Black Professional Service Provider"	means Black individuals who provide services of a professional nature.
"Certified Learning Programme"	means any Learning Programme for which the Measured Entity has: (a) any form of independent written certification as referred to in the "Learning Achievements" column of the Learning Programmes Matrix; or if it does not have such certification: (b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 400 and 804 confirming the employee has: (i) enrolled for, is attending and is making satisfactory progress in the Learning Programme; or (ii) enrolled for but not attended the Learning; or (iii) attended the Training Programme but has failed an evaluation of their learning progress;

"Companies Act"	means the Companies Act 61 of 1973 as amended or substituted;
"Company limited by guarantee"	means a company as referred to in section 19(1)(b) of the Companies Act;
"Competent person"	means a person who has acquired through training, qualification and experience the knowledge and skills necessary for undertaking any task assigned to them under the codes;
"Core Skills"	means skills that are: (a) value-adding to the activities of the Measured Entity in line with its core business; (b) in areas the Measured Entity cannot outsource; or (c) within the production/operational part of the Measured Entity's value-chain; as opposed to the supply side; services or downstream operations;
"Critical Skills"	means those skills identified as being critical by any SETA;
"Disabled Employees"	has the meaning defined in the Code of Good Practice on Key Aspects of Disability in the Workplace issued under section 54 of the Employment Equity Act;
"EAP"	Economically Active Population as determined and published by Stats SA. The operative EAP for the purposes of any calculation under the Codes will be the most recently published EAP;
"Economic interest"	means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified Through Principles;
"EE Act"	means the Employment Equity Act of 1998, as amended;
"EE Regulations"	means the regulations under the Employment Equity Act
"Elements"	means the measurable quantitative or qualitative elements of BEE compliance in the Generic Scorecard and the Primary Codes;
"Employee"	bears the meaning as defined in the Labour Relations Act 66 of 1995 as amended;
"Employee Ownership Scheme"	means a worker or employee scheme;
"Entrepreneur"	means a person who starts and / or operates a business which includes identifying opportunities in the market, taking risks with a view of being rewarded with profits;
"Entity"	means a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa;
"Enterprise Development Contributions"	means monetary or non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries: (a) Category A Enterprise Development Contributions involves Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black women owned; (b) Category B Enterprise Development Contributions involves Enterprise Development Contributions to any other Entity that is 50% black owned or black women owned; or 25% black owned or black women owned with a BEE status of between Level One and Level Six;
"Equity Equivalent contribution"	means an equity equivalent contribution made by a Multinational under an Equity Equivalent Programme;
"Equity Equivalent Programme"	means a public programme or scheme of any government department, provincial or local government in the Republic of South Africa or any other programme approved by the Minister as an Equity Equivalent Programme;
"Equity instrument"	means the instrument by which a Participant holds rights of ownership in an Enterprise;
"Equivalency Percentage"	means a percentage ownership performance for all the indicators in the Associated Enterprise's Ownership Scorecard arising from a Qualifying Transaction included in the Ownership Scorecard of the beneficiary entity;

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

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

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

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



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