

# B-BBEE CODES OF GOOD PRACTICE GUIDE



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# B-BBEE Codes of Good Practice Guide

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### **Important note and disclaimer**

The information contained herein is a summary of some of the key provisions contained in the Broad-Based Black Economic Empowerment Amendment Act, no. 46 of 2013, (the "B-BBEE Amendment Act") which came into operation on the 24 October 2014, and the amended B-BBEE Codes of Good Practice, which became effective during May 2015. The guide is issued as a general overview of the amended Codes, in order to highlight those aspects that will have to be faced in future when meeting the challenge of empowerment. Due to limitations in length of the guide, many aspects have not been covered. We recommend that professional advice be sought before making any decisions based on this guide's contents or when dealing with any matters relating thereto. The guide should not be treated as a substitute for advice. All references to the masculine gender shall include the feminine (and vice versa). While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.

# 1 Introduction

B-BBEE was initiated by the South African government, and is aimed at empowering “black” people.

It redresses the inequalities of the past. The Department of Trade and Industry (DTI) is the custodian of B-BBEE in terms of the B-BBEE Act.

“Black” people in South Africa include Africans, Asians and persons of mixed race. Women of all races are also seen to be previously disadvantaged and B-BBEE encourages the empowerment of all women.

Through its B-BBEE policy, the government aims to achieve some of the following objectives:

Empower more black people to own and manage enterprises. Enterprises are regarded as black-owned if at least 51% of the enterprise is owned by black people, and black people have substantial management control of the business.

Achieve a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises.

Promote access to finance for black economic empowerment.

Increase the extent to which black women own and manage existing and new enterprises, and facilitate their access to economic activities, infrastructure and skills training.

Ensure that black-owned enterprises benefit from the government’s preferential procurement policies.

The Codes set out guidelines for facilitating B-BBEE and scoring.

## 1.1 How compliance is achieved

In terms of the amended Codes, B-BBEE compliance is achieved by a business by reference to its overall score achieved in respect of five specific B-BBEE elements and measured in accordance with a B-BBEE scorecard.

Every entity subject to B-BBEE is required to maintain a scorecard prepared and verified by an accredited verification agency.

# 2 Implementation

Phase 1 of the amended B-BBEE Codes of Good Practice, which covers about 80% of the entire B-BBEE Codes of Good Practice was gazetted on 11 October 2013 (Government Gazette 36928), and the amendment was gazetted on 6 May 2015 (Government Gazette 38765). Phase 2 was gazetted on 10 October 2014 (Gazette no 38076) for public comment, and came into operation on 1 May 2015 (Gazette no 38766). It covers the remaining 20%.

**Phase 1** relates to General Principles (Code 000), the Ownership element (Code 100), Management Control element (Code 200), Enterprise and Supplier Development element (Code 300), Skills Development element (Code 400), and the Socio-Economic Development element (Code 500). These relate to the Generic Scorecard (in other words, for those industries that have no specific Sector Scorecard). The amendment to Phase 1 relates, inter alia, to the amendment of Code Series 400, (additional criterion for the Empowering Supplier), and amendment to the affidavit requirement for an Exempted Micro Enterprise (EME) obtained from the Companies and Intellectual Property Commission.

**Phase 2** relates to the Development and Gazette of Sector Charters (Code 000 Statement 003), the Scorecard for Specialised Enterprises (Code 000 Statement 004), Recognition of Sale of Assets (Code 100 Statement 102), The Recognition of Equity Equivalent for Multinationals (Code 100 Statement 103), and the Measurement of Qualifying Small Enterprises (QSE's) (Code 600 Statement 600).

|   | <b>Government Gazette</b>                           | <b>Into operation</b>  |
|---|---|--|
| B-BBEE Amendment Act 46 of 2013           | Proclamation<br>Gazette 38126 of 24<br>October 2014 | 24 October 2014  |
| Phase 1 Amended Codes of Good Practice    | Gazette 36928 of 11<br>October 2013                 | 1 May 2015<br>(into effect per Notice<br>of Clarification - Gazette<br>38799 of 15 May 2015) |
| Amendment to Phase 1                      | Gazette 38765 of 6 May<br>2015                      | 1 May 2015<br>(into effect per Notice<br>of Clarification - Gazette<br>38799 of 15 May 2015) |
| Phase 2 of Amended Codes of Good Practice | Gazette 38076 of 10<br>October 2014                 | For public commentary until<br>14 November 2014  |
|   | Gazette 38766 of 6 May<br>2015                      | 1 May 2015   |

The Revised Notice of Clarification contained in Government Gazette no 38799 of 15 May 2015 states that all B-BBEE verifications in respect of a financial year ending on or before 30 April 2015 can be conducted using the old Codes of Good Practice (Notice 112, Gazette No 29617 of 9 February 2007), and all B-BBEE verifications in respect of a financial year ending after 1 May 2015 must be conducted using the Amended Codes of Good Practice, with the exception of the Sector Codes.

The Notice also states that in respect of EME certificates which were issued without Empowering Supplier status, the interpretation stated in the Amended Codes of Good Practice clause 3.3.1, Amended Code Series 400 Gazette No 36928 will be applied, which states that "Exempted Micro Enterprises and Start-Ups are automatically recognised as Empowering Suppliers."

The Minister of Trade and Industry, Dr Rob Davies has announced that Section 3(b) of the B-BBEE Amendment Act has automatically commenced with effect from the 24 October 2015, by operation of law.

Section 3(b) stipulates that in the event of any conflict between the B-BBEE Act and any other law in force immediately prior to the date of commencement of the B-BBEE Amendment Act, the B-BBEE Act prevails if the conflict specifically relates to a matter dealt with in the B-BBEE Act. This trumping provision was inserted to safeguard the objectives and spirit of transformation.

#### 4.1 Turnover Thresholds

|   | 2013 Codes  | 2007 Codes   |
|---|---|--|
| <b>Large Enterprises (Generic)</b>        | Turnover greater than R50 million per year            | Turnover greater than R35 million per year           |
| <b>Qualifying Small Enterprises (QSE)</b> | Turnover between R10 million and R50 million per year | Turnover between R5 million and R35 million per year |
| <b>Exempt Micro Enterprises (EME)</b>     | Turnover between R0 and R10 million per year          | Turnover between R0 and R5 million per year          |

#### 4.2 Elements of the Generic Scorecard

The elements of the scorecard have been reduced from seven to five, scored on five targeted elements totaling 109 points, plus 9 bonus points (currently 100 plus 7 bonus points).

| Amended Codes (2013)                                   | Weighting (in points) | Compliance Target  | 2007 Codes                 | Weighting (in points) |
|--|-----------------------|--|----------------------------|-----------------------|
| Ownership (Priority element)                           | 25                    | 25% + 1 vote   | Ownership                  | 20                    |
| Management Control                                     | 19                    | (50% to 88%)   | Management Control         | 10                    |
|  |                       |  | Employment Equity          | 15                    |
| Skills Development (Priority element)                  | 20                    | 6% of payroll  | Skills Development         | 15                    |
| Supplier and Enterprise Development (Priority element) | 40                    | Preferential Procurement = 80%<br>Supplier Development = 2% (of Net Profit After Tax)<br>Enterprise Development = 1% (of Net Profit After Tax) | Procurement                | 20                    |
|  |                       |  | Enterprise Development     | 15                    |
| Socio-Economic Development                             | 5                     | 1% (of Net Profit After Tax)   | Socio-Economic Development | 5                     |

### Under the amended Codes:

All companies are required to comply with all the elements of the amended Codes, except EME's and > 50% black owned QSE's.

The Generic scorecard is adjusted in accordance with government key priorities.

Ownership, Skills Development and Enterprise and Supplier Development are Priority Elements.

### Priority Elements:

Large Enterprises are required to comply with all three priority elements.

QSE's are required to comply with Priority element one, namely Ownership, and either one of Priority element two (Skills Development), or Priority element three (Enterprise and Supplier Development).

## 4.3 Sector Codes

Specific codes exist for certain sectors in South Africa, and apply if a business is involved in these sectors. They are: financial services, chartered accountancy, construction, forestry, property, agriculture, marketing, advertising and communication, information and communications technology, tourism and the transport sector. Phase 2 of the amended Codes (Gazette 38766 of 6 May 2015) sets out the process for developing and gazetting Sector Codes, as well as the approach for drawing up Sector Codes, and the role of Sector Charter Councils.

Each Sector Industry Council is required to compile their own B-BBEE scorecard.

The general rule is that an entity falling under a specific sector code must be measured under that code, and may not choose the generic codes.

Although the Generic Scorecard was implemented on 1 May 2015, most of the amended Sector Scorecards have not been finalised or implemented as at the date of publication hereof. These Sector Codes are required to be published in the Government Gazette for public comment for at least 60 days. The Minister of Trade and Industry is required to then approve and issue the final sector code in terms of the Act. The only Draft Sector Codes that have been submitted to the DTI and gazetted for comment are:

The Forestry Sector Code (Government Gazette no. 39368 of 6 November 2015)

The updated Property Sector Code (Government Gazette no.39320 of 23 October 2015, as corrected in Government Gazette no.39342 of 30 October 2015).

The Tourism Sector Code (Government Gazette no. 38915 of 30 June 2015) was published for comment on 30 June 2015.

The other updated Sector Codes have not been submitted to the DTI at date of publication hereof. Sector Industry Councils and Stakeholders have been given until the 15th November 2015 to align these Codes, and submit them to the DTI, failing which, the DTI has released a statement to the effect that all existing Sector Codes that have not submitted applications for approval to the Minister (by the required date) to be aligned with B-BBEE Codes of Good Practice, will be repealed.

All businesses that fall under a Sector Scorecard, and whose Industry Council does not meet the deadline, could be measured under the General Amended Codes Scorecard.



## 5.1 Adjustment of Thresholds

The Minister may, by notice in the Gazette, adjust the thresholds in which relate to Exempted Micro Enterprises, Qualifying Small Enterprises and Start-Ups.

Any such changes apply to compliance reports prepared for a measured entity after a twelve month period following the gazetting of the adjustment.

## 5.2 Way forward

All businesses will need to understand how the amended Codes work, and begin planning and revising their B-BBEE strategies. Although there is no legal obligation to comply with B-BBEE targets, an entity's B-BBEE status is an important factor affecting its ability to successfully tender for Government and public entity tenders, to obtain licences (where applicable). Private sector clients are increasingly requiring their suppliers to have a minimum B-BBEE rating, in order to boost their own B-BBEE ratings.

The Minister may review the Codes at any stage, and regular reviews will take place to monitor the implementation of B-BBEE throughout the economy.

The B-BBEE Verification Manual, which provides the minimum requirements for the amended Codes verification has, at date of publication hereof, yet to be finalised and released.

Entities are required to adhere to their financial periods for assessment on the amended Codes.

A new, independent regulator of verification agencies will be established in 2016.

The amendments provide for the establishment of a B-BBEE Commission.

South African listed companies now have to provide a report to the Commission on their compliance with B-BBEE.

There is an absolute obligation on Government and public entities to take the Codes into account in their procurement policies and in issuing licences and authorisations.

## 6.1 Application of the Codes

The following entities are measurable under the Codes (referred to as “measured entities” below):

- (i) all Organs of State and Public Entities.
- (ii) all measured entities that undertake any economic activity with all Organs of State and Public Entities.
- (iii) any other measured entity that undertakes any economic activity, whether direct or indirect, with any other measured entity that is subject to measurement under paragraphs 6.1 (i) to (ii) above, and which is seeking to establish its own B-BBEE compliance.

## 6.2 Measuring compliance

The basis for measuring the B-BBEE compliance of an entity as defined above, is:

In the case of an EME refer to paragraphs 6.5 and 6.6 on page 5 below.

The Generic Scorecard and QSE Scorecard, in the case of the other measured entities.

A measured entity in a sector in respect of which a sector code has been issued in terms of Section 9 of the B-BBEE Act as amended, may only be measured for compliance in accordance with that code.

## 6.3 Priority elements, and subminimum targets

The introduction of “priority elements”, means that ownership, skills development and enterprise and supplier development have additional targets, which are as follows:

The sub-minimum requirement for Ownership is 40% of the net value targets (40% of the 8 points) based on the Time Based Graduation Factor.

The sub-minimum requirement for Skills Development is 40% of the total weighting points for skills development.

The sub-minimum requirement for Enterprise and Supplier Development is 40% of each of the three categories within this element, namely preferential procurement, supplier development and enterprise development.

## 6.4 Compliance with Priority Elements and the discounting principle

A large enterprise is required to comply with all the priority elements.

A QSE is required to comply with Ownership as a compulsory element and either Skills Development or Enterprise and Supplier Development.

## **Discounting Principle Effect**

If a large enterprise does not achieve these three targets, and a QSE does not comply with the Ownership priority element and either one of the remaining two, they will be subject to a “discounting” of one level down. Notwithstanding this fact, the actual points scored by the measured entity and the consequent level that it would have achieved were it not for non-compliance with the 40% sub-minimum requirements will be recognised by the Verification Agency (“the recognition level”).

Only the discounted levels of Measured Entities shall appear on the face of the B-BBEE Certificate.

The requirement to submit data to the Department of Labour under the Employment Equity Act 55 of 1998 is only applicable to ‘designated employers’ who employ 50 or more employees. However, for the purpose of measurement, for both Generic and QSE that employ less than 50 employees, are required to submit sufficient evidence for verification purposes.

## **6.5 Eligibility as an Exempted Micro Enterprise**

- (i) Any enterprise with an annual Total Revenue of R10 Million or less, qualifies as an Exempted Micro Enterprise (EME).
- (ii) An EME is deemed to have a B-BBEE status of “Level Four Contributor” having a B-BBEE recognition level of 100%. There are no verification requirements for EME’s.

## **6.6 Enhanced B-BBEE recognition level for an EME**

- (i) Despite paragraph 6.5 (ii) above, an EME which is 100% Black owned qualifies for elevation to “Level One Contributor” having a B-BBEE recognition level of 135%.
- (ii) Despite paragraphs 6.5(ii) and 6.6 (i) above, an EME which is at least 51% Black owned qualifies for elevation to “Level Two Contributor” having a B-BBEE recognition level of 125%.

Despite paragraphs 6.5 (ii) and 6.6 above, an EME is allowed to be measured in terms of the QSE scorecard, should they wish to maximise their points and move to a higher B-BBEE recognition level.

## **6.7 Eligibility as a Qualifying Small Enterprise**

- (i) A measured entity with an annual total revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise (QSE).
- (ii) A QSE must comply with all of the five elements of B-BBEE for the purposes of measurement.
- (iii) A QSE must comply with at least two priority elements : Ownership (compulsory) and either Enterprise and Supplier Development or Skills Development Element.

## 6.8 Enhanced B-BBEE recognition level for QSE

- (i) A QSE which is 100% Black owned qualifies for a Level One B-BBEE recognition (135% recognition level).
- (ii) A QSE which is at least 51% Black owned qualifies for Level Two B-BBEE recognition level (125% recognition level)

| B-BBEE Status          | EME / QSE                        | B-BBEE Recognition Level |
|------------------------|----------------------------------|--------------------------|
| Level One Contributor  | 100% Black owned                 | 135%                     |
| Level Two Contributor  | ≥51%–99% Black owned             | 125%                     |
| Level Four Contributor | <51% Black owned, or white owned | 100%                     |

\* An EME is only required to obtain a sworn affidavit or Certificate issued by the Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming the following:

- 1) Annual total revenue of R10 million or less
- 2) Level of black ownership

Any misrepresentation constitutes a criminal offence as set out in the B-BBEE Act, as amended.

\* A QSE is only required to obtain a sworn affidavit on an annual basis, confirming the following:

- 1) Annual total revenue of R50million or less
- 2) Level of black ownership

Any misrepresentation constitutes a criminal offence as set out in the B-BBEE Act, as amended.

## 6.9 Start-Up Enterprises

A start-up enterprise must be measured as an EME for the first year following their formation or incorporation. This applies regardless of expected total revenue of the start-up enterprise.

In order to qualify as a start-up, the enterprise must provide an affidavit as per \* above.

Notwithstanding the above, when tendering for any contract, or seeking any other economic activity covered by Section 10 of the B-BBEE Act, with a value higher than R10 million, but less than R50 million, the start-up must submit a QSE Scorecard. Contracts of value R50 million or more, a Generic Scorecard, using annualised data.

## 6.10 The Elements of B-BBEE in terms of the Generic Scorecard

All companies, except EME's, will be required to comply with the re-organised elements of the B-BBEE Scorecard. Previously the scorecard had seven elements, now it has five elements, due to a consolidation of some of them.

### Large Enterprises

Large enterprises (turnover greater than R50 million per year), are measured in terms of all five elements, and are required to comply with all 5 elements.

Should a large enterprise not meet the sub-minimum targets for any of the three priority elements, its overall score will be discounted by one level based on the discounting principle.

### Five Elements

The five elements in the revised Scorecard are:

1. **Ownership:** (code series 100) measures effective ownership of entities by black people. Who owns the business (shareholders/members/owners)? This is a priority element.
2. **Management Control:** (code series 200) (incorporating employment equity) measures effective control of entities by black people. Who controls the business (directors/board/owners)? Who works in the business (management/staff) ?
3. **Skills Development:** (code series 300) measures the extent to which employers carry out initiatives designed to develop the competencies of black employees and black people, internally and externally – i.e learnerships and training programmes. This is a priority element.
4. **Enterprise and Supplier Development:** (code series 400) (incorporating preferential procurement) measures the extent to which entities buy goods and services from Empowering Suppliers with strong B-BBEE recognition levels. It also measures the extent to which enterprises carry out supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of black enterprises. Who does the business buy from (suppliers/service providers/landlords)? What is the extent to which the business assists small black owned businesses (with loans, grants, training, discounts, preferred credit terms? This is a priority element.
5. **Socio-Economic Development:** (code series 500), and sector specific contributions element: measures the extent to which entities carry out initiatives that contribute towards Socio-Economic Development or Sector Specific Initiatives that promote access to the economy for black people. Measures contributions to black beneficiaries (donations/food/school fees/products).

## 6.11 The B-BBEE Generic Scorecard

The following table represents the new B-BBEE Generic Scorecard:

| Element                             | Weighting         | Code Series Reference |
|-------------------------------------|-------------------|-----------------------|
| Ownership                           | 25 points         | 100                   |
| Management Control                  | <b>19 points*</b> | 200                   |
| Skills Development                  | 20 points         | 300                   |
| Enterprise and Supplier Development | 40 points         | 400                   |
| Socio-Economic Development          | 5 points          | 500                   |
| <b>Total</b>                        | <b>109 points</b> |                       |

**[\*Note the Codes refer to Management Control weighting as 15 points in the Generic Scorecard, however the Management Control Scorecard totals 19 points. This guide reflects 19 points as the total, subject to correction].**

## 6.12 B-BBEE Recognition levels

Based on the overall performance of a measured entity, using the Generic Scorecard and QSE Scorecard, the measured entity will receive one of the following B-BBEE statuses with the corresponding B-BBEE recognition level:

| B-BBEE Status             | Qualification                                | B-BBEE Recognition Level |
|---------------------------|--|--------------------------|
| Level One Contributor     | ≥100 points on the Generic Scorecard         | 135%                     |
| Level Two Contributor     | ≥95 but <100 points on the Generic Scorecard | 125%                     |
| Level Three Contributor   | ≥90 but <95 points on the Generic Scorecard  | 110%                     |
| Level Four Contributor    | ≥80 but <90 points on the Generic Scorecard  | 100%                     |
| Level Five Contributor    | ≥75 but <80 points on the Generic Scorecard  | 80%                      |
| Level Six Contributor     | ≥70 but <75 points on the Generic Scorecard  | 60%                      |
| Level Seven Contributor   | ≥55 but <70 points on the Generic Scorecard  | 50%                      |
| Level Eight Contributor   | ≥40 but <55 points on the Generic Scorecard  | 10%                      |
| Non-Compliant Contributor | <40 points on the Generic Scorecard          | 0%                       |

## **6.13 Enhanced recognition for certain categories of black people**

Various criteria appear throughout the Codes, which advance the interests of certain categories of black people. These include:

- Black women, who should form between 40% and 50% of the beneficiaries of the relevant elements of the Scorecard

- Black people with disabilities

- Black youth

- Black people living in rural areas, and

- Black unemployed people

who should form part of the beneficiaries of the relevant elements of the Scorecard.

This is a priority element for Large enterprises and QSE's.

## 7.1 The Ownership Scorecard

The following table represents the indicators and methods for calculating a score for Ownership:

| B-BBEE Element                             | Indicator          | Description  | Weighting Points | Compliance Target            |
|--|--------------------|--|------------------|------------------------------|
| Ownership<br>Code 100<br>Total points = 25 | Voting Rights      | Exercisable Voting Rights in the Entity in the hands of Black people   | 4                | 25% + 1 Vote                 |
|  |                    | Exercisable Voting Rights in the Entity in the hands of Black women  | 2                | 10%                          |
|  | Economic Interest  | Economic Interest in the Entity to which Black people are entitled   | 4                | 25%                          |
|  |                    | Economic Interest in the Entity to which Black women are entitled  | 2                | 10%                          |
|  |                    | Economic Interests of any of the following Black natural people in the Measured Entity   |                  |                              |
|  |                    | Black designated groups; Black participants in Employee Share Ownership Programs; Black people in Broad-based Ownership Schemes; Black people in Co-operatives | 3                | 3%                           |
|  |                    | New Entrants   | 2                | 2%                           |
|  | Realisation Points | Net Value  | 8                | Time Based Graduation Factor |



## 7.2 Key measurement principles

### General Principles

An entity receives points for participation by black people in its rights of ownership, using the ownership scorecard.

Black people may hold their rights of ownership in a measured entity as direct participants or as participants through some form of entity such as: a company defined in the Companies Act, 2008 (as amended), a close corporation, a co-operative, a trust, a broad-based ownership scheme, an employee share ownership programme, a partnership or other association of natural persons and any form of juristic person recognised under South African law.

### Sub-minimum requirements

A measured entity is required to achieve a minimum of 40% on Net Value Points (i.e 8 points) based on the Time Graduation Factor formula. Non-compliance with this sub-minimum target will result in the achieved B-BBEE status level being discounted by one level in terms of the discounting principle.

### Flow Through Principle

As a general principle, when measuring the rights of ownership of any category of Black people in a measured entity, only rights held by natural persons are relevant. If the rights of Ownership of Black people pass through a juristic person, then the rights of Ownership of Black people in that juristic person are measurable. This principle applies across every tier of Ownership in a multi-tiered chain of Ownership until that chain ends with a Black person holding rights of Ownership.

The method of applying the Flow-Through Principle across one or more intervening juristic persons set out in the Amended Codes. Due to limitations in length of this guide, the detail is not included herein.

### Modified Flow Through Principle

A measured entity applying the Modified Flow-Through Principle cannot benefit from the Exclusion Principle.

The Modified Flow-Through Principle applies to B-BBEE owned or controlled company in the Ownership of the measured entity.

In calculating Exercisable Voting Rights in the entity in the hands of black people, and Economic Interest in the entity to which black people are entitled, (as per the Ownership scorecard) the following applies:

Where in the chain of Ownership, black people have a flow-through level of participation of at least 51%, and then only once in the entire ownership structure of the measured entity, such Black participation may be treated as if it were 100% Black.

The Modified Flow-Through Principle may only be applied in the calculation of the indicators in Exercisable Voting Rights in the entity in the hands of black people, and Economic Interest in the entity to which black people are entitled, (as per the Ownership scorecard). In all other instances, the Flow-Through Principle applies.

## **Exclusion of specified entities when determining ownership**

When determining ownership in a measured entity, ownership held by organs of state or public entities must be excluded, and this exclusion is effected before any other ownership discounting methods are to be applied.

In calculating their ownership score, measured entities must apply the exclusion principle to any portion of their ownership held by organs of state or public entities.

## **B-BBEE Facilitator Status**

Despite the exclusions above, the Minister may by notice in the gazette, designate certain organs of state or public entities as B-BBEE facilitators. In calculating their ownership score, measured entities must treat B-BBEE facilitators as having rights of ownership held: 100% by black people, 40% by black women, 20% by black designated groups, without any acquisition debts and without any third party rights.

## **Mandated Investments**

When determining ownership in a measured entity, rights of ownership of mandated investments may be excluded, and the maximum % of the ownership of any measured entity that may be so excluded is 40%.

Further detail on Mandated Investments are set out in detail in the Amended Codes.

## **Recognition of ownership after sale or loss of shares by black participants**

A measured entity is allowed to recognise a portion of black ownership after a black participant has exited through the sale or loss of shares subject to the following criteria:

The black participant has held shares for a minimum period of 3 years.

Net value based on the Time Based Graduation Factor as per Annex 100(E) of the Codes must have been created in the hands of black people.

Transformation has taken place within the measured entity using the B-BBEE recognition level from the period of entry of black participants to the exiting period.

Black participation arising from continued recognition of black ownership cannot contribute more than 40% of the score on the ownership scorecard.

In the case of a sale or loss of shares by the black participant, the following additional rules apply: A written tripartite agreement between the measured entity, the black participant and a lender must record the loan or security arrangement, unless the measured entity is a lender and the period over which the continued recognition points are allocated or recognised after sale or loss of shares will not exceed the period over which the shares were held.

The ownership points under this paragraph that are attributable to the measured entity will be calculated by multiplying the following elements:

**The value created in the hands of black participants as a % of the total value of the black participants' shareholding in the measured entity at the date of sale or loss of shares**

**The B-BBEE status of the measured entity based on the balanced scorecard as at the date of measurement, and**

**The ownership points that were attributable to the measured entity on the date of sale or loss of shares.**

## **Broad-based ownership schemes and employee share ownership programme**

Black participants in Broad-based ownership schemes and employee share ownership programmes holding rights of ownership in a measured entity may contribute:

A maximum of 40% of the total points of ownership scorecard of the measured entity if they meet the qualification criteria set out in Annexe 100 (B): Rules for Broad-Based Ownership Schemes and Annexe 100 (C): Rules for Employee Share Ownership Programmes.

100% of the total points on the ownership scorecard of the measured entity if they meet the additional qualification criteria set out in Annexe 100 (B) and 100 (C).

## **Private Equity Funds**

A measured entity may treat any of its Ownership arising from a Private Equity Fund as if that Ownership were held by Black people, where the Private Equity Fund meets the following criteria:

**At least 51% of any of the Private Equity Managers' Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of Ownership, must be held by Black people.**

**At least 51% of the Private Equity Fund's Executive Management and Senior Management must be Black people.**

**At least 51% of the profits made by the Private Equity Fund Manager after realising any investment made by it, must by written agreement, accrue to Black people.**

The Private Equity Fund Manager must be a B-BBEE owned company (as defined).

The new Codes set out further aspects applicable to Private Equity Funds in detail.

In the case of Private Equity Funds that were fully invested prior to 11 October 2014, investments by the Fund Managers will be considered as being made by Black people if the Private Equity Fund Management entities meet the following criteria:

**At least 51% of any of the Private Equity Fund Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership in a Measured Entity, must be held by Black people.**

**At least 51% of the profits accruing to the Private Equity Fund Manager after realising any investment made by it, must by written agreement, accrue to Black people, and**

**Private Equity Fund Manager must be a B-BBEE owned company.**

## **Section 21\* Companies and Companies Limited by Guarantee**

A measured entity may elect to include or exclude Section 21 companies or companies limited by guarantee for the purposes of measuring ownership.

Such companies that house a Broad-based ownership scheme or an employee ownership scheme are subject to the provisions governing those types of schemes and not this paragraph.

Further detail on Section 21 Companies and Companies Limited by Guarantee is contained in the Amended Codes.

\* These companies are now referred to as Non Profit Companies, in terms of the Companies Act.

## **Trusts**

Black participants in a Trust holding rights of ownership in a measured entity may contribute:

A maximum of 40% of the total points on the ownership scorecard of the measured entity if the Trust meets the qualification criteria for Trusts set out in Rules for Trusts [Annexe 100 (D)].

100% of the total points on the ownership scorecard of the measured entity if the Trust meets the additional qualification criteria set out for Trusts in Annexe 100 (D).

## **Options and Share Warrants**

Exercisable Voting Rights and Economic Interest will be recognised where a participant holds an instrument granting the holder the right to acquire an Equity Instrument or part thereof at a future date, if the following requirements are met:

The Exercisable Voting Rights attached to that instrument are irrevocably transferred to the holder for the option period and are exercisable by the holder before acquiring the Equity Instrument.

The Value of any Economic Interest is irrevocably transferred to the holder for the option period and paid to the holder of that instrument before the exercise of that right, and

The value of the instrument must be determined by using a Standard Valuation method for calculating Net Value.

### Equity instruments carrying preference rights

An Equity Instrument carrying Preferential Rights is measurable in the same manner as an ordinary Equity Instrument.

Further detail on Equity Instruments carrying Preferential Rights is contained in the Amended Codes.

### Annexe's: Examples, Measurement and Rules

The amended Codes include five Annexe's, detailing the following relating to the Ownership element:

Annexe 100 (A): Examples of Mandated Investments

Annexe 100 (B): Rules for Broad-Based Ownership Schemes

Annexe 100 (C): Rules for Employee Share Ownership Programmes

Annexe 100 (D): Rules for Trusts

- Annexe 100 (E):
1. Measuring of Voting Rights
  2. Measurement of Economic Interest
  3. Calculation of deemed value
  4. Calculation of Net Value
  5. Calculation of the recognition of ownership after the sale or loss of shares by black Participants

8

## General Principles for measuring Management Control

### 8.1 Management Control Scorecard

The following table represents the criteria used for deriving a score for management control:

| Measurement Category and Criteria<br>Code 200<br>Total points = 19                           | Weighting Points | Compliance Targets |
|--|------------------|--------------------|
| <b>Board participation:</b>  |                  |                    |
| Exercisable voting rights of black board members as a percentage of all board members        | 2                | 50%                |
| Exercisable voting rights of black female board members as a percentage of all board members | 1                | 25%                |
| Black Executive directors as a percentage of all executive directors                         | 2                | 50%                |

| <b>Measurement Category and Criteria</b><br><b>Code 200</b><br><b>Total points = 19</b>  | <b>Weighting Points</b> | <b>Compliance Targets</b> |
|--|-------------------------|---------------------------|
| Black female Executive directors as a percentage of all executive directors  | 1                       | 25%                       |
| <b>Other Executive Management:</b>   |                         |                           |
| Black Executive Management as a percentage of all executive directors  | 2                       | 60%                       |
| Black female Executive Management as a percentage of all executive directors   | 1                       | 30%                       |
| <b>Senior Management:</b>  |                         |                           |
| Black employees in Senior Management as a percentage of all senior management  | 2                       | 60%                       |
| Black female employees in Senior Management as a percentage of all senior management   | 2                       | 30%                       |
| <b>Middle Management:</b>  |                         |                           |
| Black employees in Middle Management as a percentage of all middle management  | 2                       | 75%                       |
| Black female employees in Middle Management as a percentage of all middle management   | 1                       | 38%                       |
| <b>Junior Management:</b>  |                         |                           |
| Black employees in Junior Management as a percentage of all junior management  | 1                       | 88%                       |
| Black female employees in Junior Management as a percentage of all junior management   | 1                       | 44%                       |
| <b>Employees with disabilities:</b>  |                         |                           |
| Black employees with disabilities as a percentage of all employees (the demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity report are not applicable in this case). | 2                       | 2%                        |

Notes:

The compliance targets for Senior Management, Middle Management and Junior Management of the Management Control Scorecard are based on overall demographic representation of black people as defined in the Regulations of the Employment Equity Act and Commission on Employment Equity Report, as amended from time to time.

In determining a Measured Entity's score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black, in accordance with the Employment Equity Act on an equitable representation and weighted accordingly, being:

|               |                 |
|---------------|-----------------|
| African male  | African female  |
| Indian male   | Indian female   |
| Coloured male | Coloured female |

## 8.2 Key Measurement Principles

A measured entity receives points by meeting the targets for participation of black people and black women at Board, Executive Management, Senior Management, Middle Management, Junior Management level, and black employees with disabilities.

A measured entity must use the current payroll data in calculating its score under the Management Control Scorecard.

If a measured entity does not distinguish between Other Executive Management and Senior Management, then Executive Management is measurable as a single indicator with a Weighting of 6 points under "Other Executive Management" ie Black Executive Management as a % of all executive directors and Black female Executive management as a % of all executive directors on the scorecard, split as 4 and 2 points respectively.

## 8.3 General Principles

Executive Management positions include Chief Executive officer, Chief Operating Officer, Chief Financial Officer and other Executive Managers that serve on the Board of Directors.

Other Executive Management positions include all executive management that do not serve on the board, such as human resource executive, transformation executive and other people holding similar positions.

## 8.4 Measurement of the Management control Criteria

The new Codes set out the formula's for the measurement of the criteria of the management control element, as follows:

Annexe 200(A) A: Measurement of Senior Management, Middle Management, and Junior Management, as amended.

Annexe 200(A) B: Measurement of Management Control Indicators  
Annexe 200A.

Formula, for the calculation of the management control criteria provided for in the scorecard relating to Board participation and Other Executive Management.

Annexe 200(A)C: Measurement of Employees with disabilities.

This is a priority element.

Skills has increased from 15 points to 20 (plus potential 5 bonus points) showing the importance of skills development in the economy.

Some targets have increased: target spend is now 6% of payroll, instead of 3%, and includes the training of unemployed black people.

Under the new Codes, mandatory training such as health and safety training will no longer qualify as skills development expenditure.

The Learning Programme Matrix is set out as Annexe 300(A) of the Codes. It sets out the Categories of Learning, which are: bursaries, internships, learnerships, apprenticeships, work integrated learning, and informal training.:

How each category may be delivered

The learning site or location allowed for learning

The achievement or qualification achieved.

The amended Codes introduce a 15% cap for non-core training costs such as accommodation and catering, as well as a 15% cap on Category F&G training (informal training).

The amended codes provide points for training unemployed black persons and the number of black people “absorbed” at the end of learnership programmes.



## 9.1 The Skills Development Scorecard

The following table represents the criteria used for deriving a score for skills development:

| Category   | Skills Development Element<br>Code 300<br>Total points = 20   | Weighting Points | Compliance Targets |
|--|---|------------------|--------------------|
| Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a percentage of the Leivable Amount |   |                  |                    |
|  | Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a percentage of the Leivable Amount                    | 8                | 6%                 |
|  | Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people with disabilities* as a percentage of the Leivable Amount | 4                | 0.3%               |
| <b>Learnerships, Apprenticeships and Internships</b>   |   |                  |                    |
|  | Number of black people participating in Learnerships, Apprenticeships and internships as a percentage of total employees  | 4                | 2.5%               |
|  | Number of black unemployed people participating in training specified in the learning programme matrix as a percentage of total employees                                   | 4                | 2.5%               |
| <b>Bonus Points:</b>   |   |                  |                    |
|  | Number of black people absorbed by the Measured and Industry Entity at the end of the Learnership programme*  | 5                | 100%               |

\* The demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity report are not applicable in these cases.

The compliance targets are for the following on the scorecard:

Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the leivable amount.

Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people with disabilities as a % of the leivable amount.

Number of black people participating in Learnerships, Apprenticeships and Internships as a % of total employees.

Number of black unemployed people participating in training specified in the Learning Programme Matrix as a % of total employees.

Number of black people absorbed by the Measured and Industry entity at the end of the Learnership programme.

They are based on the overall demographic representation of black people, as defined in the Regulations of the Employment Equity Act and Commission of Employment Equity Report as amended from time to time.

In determining a measured entity's score, the targets should be further broken down into specific criteria according to the different race sub-groups within the definition of black in accordance with the Regulations of the Employment Equity Act and Commission of Employment Equity Report requirements on equitable representation and weighted accordingly.

## 9.2 Key measurement principles

The following criteria must be fulfilled in order to receive points on the scorecard:

Workplace Skills Plan, and Annual Training Report and Pivotal Report, which are SETA approved.

Implementation of Priority Skills programme generally, and more specifically for black people.

The 6% compliance target for Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the Leverageable amount, includes external training expenditure for unemployed black people.

A trainee tracking tool has to be developed in order for the measured entity to score Bonus points (number of black people absorbed by the measured and industry entity at the end of the learnership programme). If less than 100% of the trainees are absorbed as contemplated in this paragraph, the percentage achieved or absorbed will be recognised.

## 9.3 Sub-minimum and discounting principles

A measured entity must achieve a minimum of 40% of the targets set out in this element.

Non-compliance to the threshold targets will result in overall achieved B-BBEE status level being discounted by one level.

## 9.4 General Principles

These can be summarised as follows:

Generally, skills development must contribute to the economic growth and social development goals of the country, promote development of industrial skills in critical sectors, support professional and academic learning programmes, and strengthen the skills and human resource base.

Skills development expenditure (SDE) includes any legitimate expenses incurred for any learning programme offered by a measured entity to its employees evidenced by an invoice or appropriate internal accounting record.

Skills development expenditure arising from informal and workplace learning programmes or from Category F and G Learning programmes under the Learning Programmes Matrix (being occupationally directed informal instructional programmes, such as workshops or seminars, short courses or conferences, or Work-based Informal Programmes, such as informal training in the workplace) cannot represent more than 15% of the total value of skills development expenditure.

Legitimate training costs such as accommodation, catering and travelling (non-exhaustive) cannot exceed more than 15% of the total value of skills development expenditure.

Salaries or wages paid to an employee participating as a learner in any Learning Programme only constitute skills development expenditure if the Learning Programme is a learnership, internship and apprenticeship (Category B, C and D) of the Learning Programme Matrix.

Expenses on Scholarships and Bursaries for employees generally do not constitute skills development expenditure if the measured entity can recover any portion of these expenses from the employee, or if the grant is conditional. However, if the right of recovery or condition involves either of the following obligations on the employee, then the expenses are recognisable:

- the obligation of successful completion of their studies within the time period allocated, or

- the obligation of continued employment by the measured entity for a period following successful completion of their studies is not more than the period of their studies.

Mandatory sectoral training does not qualify as skills development contribution (i.e health and safety in the construction sector).

Training outside the country in line with the Learning Programme Matrix is measurable if it meets South African Qualification Authority requirement for recognition.

## **9.5 Legitimate recognisable training expenses**

Legitimate recognisable training expenses are listed as: costs of training materials, costs of trainers, costs of training facilities (including catering), scholarships and bursaries, course fees, accommodation and travel costs, administration costs including organising training, costs of employing a skills development facilitator or training manager.

## **9.6 Measurement of Skills Development Indicators**

The formula that explains the method of measurement of the criteria in the skills development scorecard is set out in formula "A" in Annexe 300 (B), as amended.

Annexe 300 (B): A & B: Measurement of Skills development Indicators as amended. Applies to Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a % of the Leviaible amount:

Formula 1 (applicable to skills development expenditure on Learning Programmes specified in the Learning Programme Matrix for black people as a % of the leviable amount).

Formula 2 (applicable to number of black people participating in Learnerships, Apprenticeships, and Internships as a % of total employees, and the number of black unemployed people participating in training specified in the Learning Programme Matrix as a % of number of employees).

Formula 3 (applicable to measurement of the criteria specified in the Learning Programme Matrix for black employees with disabilities as a % of the leviable amount, and the number of black people absorbed by the Measured and Industry entity at the end of the Learnership programme).

## 10 General Principles for measuring Enterprise and Supplier Development (ESD)

This is a priority element.

“Value adding suppliers” replaced with “Empowering Suppliers” under the amended Codes.

Combines Procurement and Enterprise Development.

### 10.1 Enterprise and Development Scorecard

The following table represents the criteria for deriving a score for Enterprise and Supplier Development:

| Criteria<br>Code 400<br>Total points = 40   | Weighting<br>Points | Compliance<br>Targets |
|---|---------------------|-----------------------|
| <b>Preferential Procurement</b>   |                     |                       |
| B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend                                       | 5                   | 80%                   |
| B-BBEE Procurement Spend from all Empowering Suppliers that are Qualifying Small Enterprises based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend | 3                   | 15%                   |
| B-BBEE Procurement Spend from all Exempted Micro-Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend                      | 4                   | 15%                   |

| <b>Criteria</b><br><b>Code 400</b><br><b>Total points = 40</b>  | <b>Weighting Points</b> | <b>Compliance Targets</b> |
|---|-------------------------|---------------------------|
| B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% black owned based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend       | 9                       | 40%                       |
| B-BBEE Procurement Spend from Empowering Suppliers that are at least 30% black women owned based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend | 4                       | 12%                       |
| <b>Bonus Points:</b>  |                         |                           |
| B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% Black owned  | 2                       | 2%                        |
| <b>Supplier Development</b>   |                         |                           |
| Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target  | 10                      | 2% of NPAT                |
| <b>Enterprise Development</b>   |                         |                           |
| Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target   | 5                       | 1% of NPAT                |
| <b>Bonus Points</b>   |                         |                           |
| Bonus point for graduation of one or more Enterprise Development beneficiaries to graduate to the Supplier Development level  | 1                       |                           |
| Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives by the Measured Entity  | 1                       |                           |

## 10.2 Key measurement principles

The ESD consists of preferential procurement, Enterprise development and Supplier development. Enterprise Development and Supplier Development contributions will be recognised as a % of annual Net Profit After Tax (NPAT).

## 10.3 Sub-Minimum and Discounting Principle

A measured entity must achieve a minimum of 40% of each of the targets set out in Preferential Procurement, Supplier Development and Enterprise Development excluding bonus points of the ESD scorecard. Non-compliance will result in the overall achieved B-BBEE status level being discounted one level.

| Summary                |                  |
|------------------------|------------------|
| Procurement            | 25 points        |
| Supplier development   | 10 points        |
| Enterprise development | 5 points         |
| <b>Total</b>           | <b>40 points</b> |
| Bonus                  | 4 points         |

## 10.4 Empowering Suppliers

An “Empowering Supplier” within a context of B-BBEE is a B-BBEE compliant entity, which is a good citizen South African entity, which complies with all the regulatory requirements of the country and should meet at least three of the following criteria if it is a large enterprise, and one if it is a QSE:

- (a) At least 25% of cost of sales (excluding labour cost and depreciation) must be procured from local producers or a local supplier in South Africa. For the service industry labour costs are included but capped to 15%.
- (b) Job creation – 50% of jobs created are for black people, provided that the number of black employees since the immediate prior verified B-BBEE measurement is maintained.
- (c) At least 25% transformation of raw material/beneficiation which include local manufacturing, production and/or assembly, and/or packaging.
- (d) Skills transfer - at least spend 12 days per annum assisting black EME’s and QSE’s beneficiaries to increase their operation or financial capacity.
- (e) At least 85% of labour costs should be paid to South African employees by service industry entities.

EME’s and Start-Ups are automatically recognised as Empowering Suppliers.

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

If a measured entity procures goods or services from a supplier that is:

- i) A recipient of a supplier development contributions from a measured entity under Code series 400 has a minimum 3 year contract with the measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2;
- ii) A black owned QSE or EME which is not a supplier development beneficiary but has a minimum 3 year contract with the measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2;
- iii) A first time supplier to that measured entity, the recognisable B-BBEE Procurement Spend that can be attributed to that supplier is multiplied by a factor of 1.2.

Procurement of goods and services and any other activities that fall under Preferential Procurement on the scorecard will not qualify for scoring under Supplier Development and Enterprise Development on the scorecard, and vice versa.

Beneficiaries of Supplier Development and Enterprise Development are EME's or QSE's which are at least 51% black owned or at least 51% black women owned.

## 10.5 Some General Principles of ESD:

Some of the general principles of ESD are:

to strengthen local procurement in order to help build SA's industrial base in critical sectors of production and value adding manufacturing, which are largely labour-intensive industries.

to actively support procurement from black owned QSE's and EME's by identifying opportunities to increase procurement from local suppliers in order to support employment creation.

to support procurement from black owned and black women owned businesses in order to increase the participation of these businesses in the main stream economy.

to promote the use of black owned professional service providers and entrepreneurs as suppliers.

measured entities receive recognition for any Enterprise Development and Supplier Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

measured entities are encouraged to align their Enterprise Development and Supplier Development initiatives with the designated sectors of government's localisation and value adding programmes.

measured entities are encouraged to align their enterprise development and supplier development initiatives with their supply chain requirements thereby linking Enterprise Development and Supplier Development with Preferential Procurement.

Qualifying Enterprise Development and Supplier Development Contributions of any measured entity are recognisable on an annual basis.

Measured entities are encouraged to develop and implement an Enterprise Development Plan and Supplier Development Plan for Qualifying beneficiaries. The plan should include clear objectives, priority interventions, key performance indicators, and a concise implementation plan with clearly articulated milestones.

Measured entities will not get recognition for the same activities undertaken under Supplier Development and Enterprise Development on the scorecard, they will only get recognition for one of the two.

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

## 10.6 Total Measured Procurement Spend

The Codes identify the procurement that is measurable within Total Measured Procurement Spend under the general headings of Cost of sales, Operational expenditure and capital expenditure.

Public Sector procurement, Exclusions, Empowerment related procurement, imports are all expanded upon in the amended Codes.

## 10.7 Measurement of B-BBEE Procurement Spend

B-BBEE Procurement Spend can be measured in terms of formula “A” in Annexe 400(A) of the Codes.

## 10.8 Calculation of Preferential Procurement Contributions to B-BBEE

A measured entity receives a score for procurement in proportion to the extent that it meets the compliance target.

The measured entity’s score for Preferential Procurement contributions to B-BBEE under the preferential procurement scorecard can be calculated in terms of formula “B” in Annexe 400(A) of the Codes.

**The Codes provide for the following under the ESD element, which provisions, have not been included in this guide, due to limitations in length:**

Enterprise Development and Supplier Development Contributions

Monetary and Non-Monetary Contributions

Measurement of Enterprise Development and Supplier Development Contributions:

Annexe 400(A): A: B-BBEE Procurement Spend Formula

Annexe 400(A):B:Calculation of Preferential Procurement Contributions to B-BBEE

Annexe 400(B): Enterprise Development and Supplier Development Benefit Factor Matrix.

## 11 General principles for measuring the Socio-Economic Development Element

### 11.1 The Socio-Economic Development Scorecard

|   |
|---|
| <b>A The Net Profit After Tax (NPAT) or average target applies unless:</b>  |
| (i) the company does not make a profit last year or on average over the last five years   |
| (ii) the net profit margin is less than a quarter of the norm in the industry.  |
| <b>B If the Turnover is to be used, the target will be set at:</b>  |
| (i) 1% of Indicative Profit Margin (NPAT/Turnover) x Turnover   |
| (ii) Indicative Profit margin is the profit margin in the last year where the company’s profit margin is at least one quarter of the industry norm. |

The following table represents the criteria and method used for deriving a score for Socio-Economic Development (SED):



| <b>Criteria</b><br><b>Code 500</b><br><b>Total points = 5</b>                      | <b>Weighting Points</b> | <b>Compliance Target</b> |
|--|-------------------------|--------------------------|
| Annual value of all SED Contributions by the measured entity as a % of the target. | 5                       | 1% of NPAT               |

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

## 11.2 Key measurement principles

### General Principles

Measured entities receive recognition for any SED contributions quantifiable as a monetary value using a Standard Valuation Method. SED contributions of any measured entity are recognisable annually, and no portion of the value of any SED contribution that is payable to the beneficiary after the date of measurement can form part of any calculation.

### SED Contributions

- (a) SED contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a measured entity with the specific objective of facilitating income generating activities for targeted beneficiaries.
- (b) The full value of SED contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people.
- (c) If less than 75% of the full value of SED contributions directly benefits black people, the value of the contribution made multiplied by the % that benefits black people, is recognisable.
- (d) The following is a non-exhaustive list of SED contributions:
  - Grant contributions to beneficiaries of SED contributions, guarantees given or security provided for beneficiaries, direct costs incurred by a measured entity in assisting beneficiaries, overhead costs of a measured entity directly attributable to SED contributions, developmental capital advanced to beneficiary communities, preferential terms granted by a measured entity for its supply of goods or services to beneficiary communities, payments made by the measured entity to third parties to perform SED on the measured entity's behalf, subject to paragraph (e) below, provision of training or mentoring to beneficiary communities which will assist them to increase their financial capacity, and subject to paragraph (f) below, the maintenance by the measured entity of a SED unit which focuses only on support of beneficiaries and beneficiary communities.
- (e) Providing training or mentoring to beneficiary communities by a measured entity. (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the measured entity in carrying out such activities. A clear justification must support any claim for the time costs incurred, commensurate with the seniority and expertise of the trainer or mentor).

- (f) Maintaining a SED unit by the measured entity. (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting and implementing SED constitute contributions).
- (g) Payments made by the measured entity to third parties to perform SED on the measured entity's behalf.

### 11.3 Measurement of SED and Contributions

The new Codes set out the formula for measurement of SED Contributions [Annexe 500(B)].

### 11.4 The Benefit Factor Matrix

The new Codes set out the current Benefit Factor Matrix [Annexe 500(A)], and measurement of Qualifying Contributions [Annexe 500(B)].

## 12 Scorecards for Specialised Enterprises

The objectives of this Statement (004) are to:

Provide guidance about the treatment of Ownership for Specialised Enterprises for B-BBEE purposes, of:

- Companies limited by guarantee
- Higher Education Institutions
- Non-Profit Companies
- Public entities and other Enterprises exclusively owned by organs of State
- Public Benefit Schemes or Public Benefit Organisations

Specify scorecards applicable to Measured Entities subject to this statement.

General Principles

Every organ of State and public entity must apply any relevant Codes of Good Practice issued in terms of the B-BBEE Act as amended when:

- Determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law
- Developing and implementing a preferential procurement policy
- Determining qualification criteria for the sale of state-owned enterprises
- Developing criteria for entering into partnerships with the private sector
- Determining criteria for the awarding of incentives, grants and investment schemes in support of B-BBEE.

Public entities and other enterprises exclusively owned by organs of State are not capable of evaluation of Black Ownership under Code series 100.

Higher Education Institutions are not public entities under the Public Finance Management Act of 1999. They are incapable of evaluation of Black Ownership under Code series 100.

Companies limited by guarantee and Non-Profit Companies have no shareholding. They are not capable of evaluation of Black Ownership under Code series 100. This does not imply that companies limited by guarantee and Non-Profit Companies sharing in the ownership of other enterprises cannot contribute towards black ownership to such enterprises as provided for in Statement 100.

Wherever any of the entities listed in paragraphs above require evidence of their own B-BBEE compliance, they will use the Specialised Generic Scorecard. If those entities are also Qualifying Small Enterprises, they will use the Specialised Qualifying Small Enterprises Scorecard.

Entities that are Exempted Micro Enterprises (EME) under this statement are deemed to have a B-BBEE status of Level Four, having a B-BBEE recognition level of 100%.

#### **Enhanced B-BBEE recognition level for an EME:**

An EME that has at least 75% black beneficiaries qualifies for elevation to Level One Contributor, having a B-BBEE recognition level of 135%, and

An EME that has at least 51% black beneficiaries qualifies for elevation to Level Two Contributor, having a B-BBEE recognition level of 125%.

An EME is only required to obtain a sworn affidavit annually confirming the following:

Annual Total Revenue/Allocated Budget/Gross Receipts of R10 million or less, and

Level of percentage of black beneficiaries.

Any misrepresentation constitutes a criminal offence as set out in the B-BBEE Act as amended.

Entities that are Qualifying Small Enterprises (QSE) will use the Specialised Qualifying Small Enterprises Scorecard.

A QSE that has at least 75% black beneficiaries qualifies for elevation to Level One Contributor, having a B-BBEE recognition level of 135%.

A QSE that has at least 51% black beneficiaries qualifies for elevation to Level Two Contributor, having a B-BBEE recognition level of 125%.

A QSE that has at least 51% black beneficiaries is only required to obtain a sworn affidavit annually confirming the following:

Annual Total Revenue/Allocated Budget/Gross Receipts of R50 million or less, and

Level of percentage of black beneficiaries.

Any misrepresentation constitutes a criminal offence as set out in the B-BBEE Act as amended.

## THE SPECIALISED GENERIC SCORECARD

| Element  | Category & Indicator                                     | Weighting Points   | Compliance Target |
|--|--|--|-------------------|
| Management Control<br>Code 200<br>Total Points = 20  | Exercisable Voting Rights of black Board members.        | 2  | 50%               |
|  | Exercisable Voting Rights of black Female Board members. | 1  | 25%               |
|  | Black Executive directors.                               | 2  | 50%               |
|  | Black Female Executive directors.                        | 1  | 25%               |
|  | Black Executive Management.                              | 2  | 60%               |
|  | Black Female Executive Management.                       | 1  | 30%               |
|  | Black Employees Senior Management.                       | 2  | 60%               |
|  | Black Female Employees Senior Management.                | 1  | 30%               |
|  | Black Employees Middle Management.                       | 2  | 75%               |
|  | Black Female Employees Middle Management.                | 1  | 38%               |
|  | Black Employees Junior Management.                       | 2  | 88%               |
|  | Black Female Employees Junior Management.                | 1  | 44%               |
|  | Black Employees with disabilities.                       | 2  | 2%                |
|  | Skills Development<br>Code 300<br>Total Points = 25      | Spend on learning programmes for black people as a percentage of Leviale Amount.** | 9                 |
| Spend on learning programmes for black employees with disabilities as a percentage of Leviale Amount.                                  |  | 4  | 0.3%              |
| Black people participating in Learnerships, Apprenticeships and Internships as a percentage of total employees.**                      |  | 6  | 2.5%              |
| Black unemployed people participating in training specified in the learning programme matrix as a percentage of number of employees.** |  | 6  | 2.5%              |
| Black people absorbed by the Measured Entity and Industry at the end of the learnership/ apprenticeship or internship programme        |  | 5  | 100%              |

| Element  | Category & Indicator   | Weighting Points | Compliance Target  |
|--|--|------------------|--|
| Enterprise and Supplier Development<br>Code 400<br>Total Points = 54 | B-BBEE Procurement Spend from all Empowering Suppliers.  | 5                | 80%  |
|  | B-BBEE Procurement Spend from all Empowering Suppliers that are QSEs.  | 4                | 15%  |
|  | B-BBEE Procurement Spend from all EMEs.  | 5                | 14%  |
|  | B-BBEE Procurement Spend from all Empowering Suppliers that are at least 51% black owned.                                      | 11               | 40%  |
|  | B-BBEE Procurement Spend from all Empowering Suppliers that are at least 30% black women owned.                                | 5                | 12%  |
|  | <b>Bonus points:</b><br>B-BBEE Procurement Spend from Designated Group Suppliers that are at least 51% black owned.            | 2                | 2%   |
|  | Annual Value of all Supplier Development Contributions of the target.  | 15               | 2% of NPAT of 0.2% Revenue / Budget / Receipts / Discretionary spend |
|  | Annual Value of Enterprise Development Contributions and sector specific programmes.   | 5                | 1% of NPAT of 0.1% Revenue / Budget / Receipts / Discretionary spend |
|  | Bonus point for graduation of one or more Enterprise Development beneficiaries to graduate to the Supplier Development level.  | 1                |  |
|  | Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives. | 1                |  |
| Socio-economic Development   Code 500<br>Total Points = 5            | Annual value of all Socio-Economic Development Contributions.  | 5                | 1% of NPAT of 0.1% Revenue / Budget / Receipts / Discretionary spend |

\* The compliance targets for Senior, Middle and Junior Management of the Management Control scorecard are based on the overall demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity. Report, as amended from time to time. In determining a Measured Entity's score, the targets should be broken down into specific criteria according to the different race sub-groups, within the definition of black and in accordance with the Employment Equity Act, and weighted accordingly.

\*\*These compliance targets of the Skills Development scorecard are based on the overall demographic representation of black people as defined in the Regulations of Employment Equity Act and Commission on Employment Equity Report, as amended from time to time.

## THE SPECIALISED QSE SCORECARD

A QSE that qualifies as a specialised QSE according to this statement, is required to comply with all the applicable elements for purposes of measurement under this Scorecard:

| Element  | Category & Indicator   | Weighting Points | Compliance Target  |
|--|--|------------------|--|
| Management Control<br>Code 602<br>Total Points = 25        | Black Executive Management   | 8                | 50%  |
|  | Black female Executive Management  | 3                | 25%  |
|  | Black Senior, Middle and Junior management   | 11               | 60%  |
|  | Black female Senior, Middle and Junior management  | 3                | 30%  |
| Skills Development<br>Code 603<br>Total Points = 30        | Learning programme spend for black people as a percentage of leviabale amount  | 24               | 3%   |
|  | Learning programme spend for black female as a percentage of leviabale amount  | 6                | 1%   |
| Preferential Procurement<br>Code 604<br>Total Points = 30  | Spend from all Empowering Suppliers as a percentage of Total Measured Procurement Spend  | 25               | 60%  |
|  | Spend from Empowering Suppliers that are at least 51% black owned as a percentage of Total Measured Procurement Spend  | 5                | 10%  |
| Socio-Economic Development   Code 605<br>Total Points = 15 | Annual value of all Socio-Economic Development Contributions and Qualifying Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target | 15               | 1% of NPAT or 0.1% Revenue / Budget / Receipts / Discretionary Spend |

### Important Clarification

The status of Socio-Economic Development Contributions made to any of the types of entities in paragraphs one and two under Code series 500 or 605 is not dependent on such entity's scorecard result, but rather on the nature of the contribution itself and the identity of that contribution's beneficiaries.

## 13 Recognition of the Sale of Assets, Equity Instruments and other businesses

The objectives of this Statement (102) are to:

Set out the conditions where Sale Assets, Equity Instruments and other Businesses will be recognised.

Set out how the Ownership points will be determined.

## 14 The Recognition of Equity Equivalents for Multinationals

The objectives of this Statement (103) are to:

Define the means by which Multinationals may apply for recognition of Equity Equivalent programmes

Specify how contributing towards the Ownership element of B-BBEE by Multinationals is measurable.

The details of statements 103 and 104 have not been included herein, due to limitations in length of this guide. Refer to Phase 2 of the Amended Codes of Good Practice contained in Government Gazette no 38766 of 6 May 2015 for further information.

## 15 Measurement framework for QSE's

The objectives of this statement (600) are to:

Specify the Elements of B-BBEE measurable under the QSE Scorecard

Specify the QSE Scorecard

Specify the principles in the Generic Statements (100 - 500) applicable to QSE's

Specify the scorecard for measuring the QSE contributions to B-BBEE

The key measurement principles for measuring QSE contribution to B-BBEE are specified under Statement 000: General Principles and the Generic Scorecard unless stated in this statement.



The following Table represents the QSE Scorecard:

| <b>QSE Ownership Scorecard</b>   |                         |                          |
|--|-------------------------|--------------------------|
| <b>Category and Ownership Indicator Code 601, Total points = 25</b>  | <b>Weighting Points</b> | <b>Compliance Target</b> |
| <b>Voting Rights:</b>  |                         |                          |
| Exercisable Voting Rights in the Enterprise in the hands of black people   | 5                       | 25% + 1 vote             |
| Exercisable Voting Rights in the Enterprise in the hands of black women  | 2                       | 10%                      |
| <b>Economic Interest:</b>  |                         |                          |
| Economic Interest of black people in the Enterprise  | 5                       | 25%                      |
| Economic Interest of black women in the Enterprise   | 2                       | 10%                      |
| New Entrants or Black Designated Groups  | 3                       | 2%                       |
| <b>Realisation points:</b>   |                         |                          |
| Net Value  | 8                       | Refer to Annex 100 (E)   |
| <b>General Principles:</b> Key measurement principles and sub-minimum requirements under statement 100 are applicable to this statement, and any interpretation or calculation of a QSE score for ownership must be made in accordance with statement 100. |                         |                          |

| <b>QSE Management Control Scorecard</b>  |                         |                          |
|--|-------------------------|--------------------------|
| <b>Criteria Code 602, Total points = 15</b>  | <b>Weighting Points</b> | <b>Compliance Target</b> |
| <b>Executive Management:</b>   |                         |                          |
| Black representation at Executive Management   | 5                       | 50%                      |
| Black female representation at Executive Management.   | 2                       | 25%                      |
| <b>Senior, Middle and Junior Management:</b>   |                         |                          |
| Black representation at Senior, Middle and Junior management   | 6                       | 60%                      |
| Black female representation at Senior, Middle and Junior management  | 2                       | 30%                      |
| <b>General Principles:</b> For the purpose of the QSE scorecard, executive management include other executive management as described under the general principles of statement 200. The demographic representation of black people as defined in the Regulations of the Employment Equity Act and Commission on Employment Equity report are not applicable to the QSE Scorecard. A measured entity must use the recent payroll data in calculating its score under the management control scorecard. |                         |                          |

| <b>QSE Skills Development Scorecard</b>   |                             |                              |
|---|-----------------------------|------------------------------|
| <b>Skills Development Element<br/>Code 603, Total points = 25</b>   | <b>Weighting<br/>Points</b> | <b>Compliance<br/>Target</b> |
| Skills development expenditure on learning programmes specified in the learning programme matrix for black people as a percentage of leviabale amount.  | 15                          | 3%                           |
| Skills development expenditure on learning programmes specified in the learning programme matrix for black female as a percentage of leviabale amount.  | 7                           | 1%                           |
| Skills development expenditure on learning programmes specified in the learning programme matrix for black people with disabilities as a percentage of leviabale amount.  | 3                           | 0.15                         |
| <b>Bonus Points</b>   |                             |                              |
| Number of black people absorbed by the measured entity and industry at the end of the learning programme.   | 5                           | 100%                         |
| <p><b>General Principles:</b> Sub-minimum requirements and Discounting principle under Statement 300 are applicable to this statement. The demographic representation of black people as defined in the Regulations of the Employment Equity Act and the Commission on Employment Equity report are not applicable to the QSE Scorecard. Where applicable, the following criteria must be fulfilled in order for the Measured Entity to receive points on the Skills Development scorecard : Workplace Skills Plan, an Annual Training Report and Pivotal Report which are SETA approved, and Implementation of Priority Skills programme generally, and more specifically for black people. The learning programme matrix under code series 300 is applicable to this statement. The learning programme matrix that explains the method of measurement of the criteria underthe skills development scorecard must be in accordance with code series 300.</p> |                             |                              |

| <b>QSE Enterprise and Supplier Development Scorecard</b>   |                             |                                   |
|--|-----------------------------|-----------------------------------|
| <b>Criteria<br/>Code 604, Total points = 30</b>  | <b>Weighting<br/>Points</b> | <b>Compliance<br/>Target</b>      |
| <b>PREFERENTIAL PROCUREMENT</b>  |                             |                                   |
| B-BBEE Procurement Spend from all Empowering Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend  | 15                          | 60%                               |
| B-BBEE Procurement Spend from Empowering Suppliers that are at least 51% black owned based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend | 5                           | 15%                               |
| <b>Bonus points</b>  |                             |                                   |
| B-BBEE Procurement Spend from Designated Group suppliers that are at least 51% black owned based on the B-BBEE Recognition Level.  | 1                           | 1%                                |
| <b>SUPPLIER DEVELOPMENT</b>  |                             |                                   |
| Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target.  | 5                           | 1% of Net Profit After Tax (NPAT) |
| <b>ENTERPRISE DEVELOPMENT</b>  |                             |                                   |
| Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.   | 5                           | 1% NPAT                           |
| <b>Bonus points</b>  |                             |                                   |
| Bonus point for graduation of one or more Enterprise Development beneficiaries to graduate to the Supplier Development level.  | 1                           |                                   |
| Bonus point for creating one or more jobs directly as a result of Supplier Development and Enterprise Development initiatives by the Measured Entity.  | 1                           |                                   |

**General Principles:** Key measurement Principles and sub-minimum requirements under statement 400 are applicable to this statement. In calculating the compliance of a measured entity the following Net Profit After Tax target applies unless: the company does not make a profit in the last year or on average over the last five years, the net profit margin is less than a quarter of the norm in the industry. If the turnover is to be used, the target will be set at:  $1\% \times \text{indicative profit margin (NPAT/turnover)} \times \text{turnover}$ , indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm. Any interpretation or calculation of a QSE's score for ESD must be made in accordance with statement 400.

**Refer to Annexe 606(A) Benefit Factor Matrix**

**QSE Socio-Economic Development Scorecard**

| <b>Criteria<br/>Code 605, Total points = 5</b>  | <b>Weighting<br/>Points</b> | <b>Compliance<br/>Target</b> |
|---|-----------------------------|------------------------------|
| Annual value of all Socio-Economic Development Contributions and Qualifying Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target. | 5                           | 1% of NPAT                   |

**Calculation:** In calculating the compliance of a Measured Entity the above NPAT target applies unless the company does not make a profit in the last year or on average over the last five years, the net profit margin is less than a quarter of the norm in the industry. If the turnover is to be used, the target will be set at:  $1\% \times \text{Indicative Profit Margin (NPAT/Turnover)} \times \text{Turnover}$ .

**Key Measurement Principles:** Measured Entities receive recognition for any Qualifying Contributions that are quantifiable as a monetary value using a Standard Valuation Method. Socio-Economic Development Qualifying Contributions of any Measured Entity are recognizable annually. No portion of the value of a Qualifying Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement. Payments made by the Measured Entity to third parties to perform social development on the Measured Entity's behalf may constitute a SED Contribution. The recognition of SED Contributions must be determined in accordance with code 500.

**Refer Annexe 605(A), 605(B)**

## 16.1 B-BBEE Commission

The amendments provide for the establishment of a B-BBEE Commission that is responsible for:

- the monitoring and evaluation of suspected cases of fronting
- the criminalisation of fronting
- the introduction of a statutory right for government or public entities to cancel a contract that was awarded under false B-BBEE credentials
- the imposing of an obligation for government and public entities to take the codes into account for procurement policies when issuing licences.

Objectives:

- to monitor and evaluate B-BBEE
- to investigate complaints and breaches of the B-BBEE Act, such as fronting.

## 16.2 New Penalties imposed

**Fronting:** The amendments to the B-BBEE Act provide for penalties for fronting as follows:

- A fine of up to 10% of annual turnover for the offending business, and
- Anyone implicated in the misrepresentation of B-BBEE status risks criminal prosecution and up to 10 years imprisonment.

**Absorbion** means a measure of the measured entity's ability to successfully secure formal permanent or long-term contract employment for the Learner or to assist the Learner's proceed with further education and training.

**Apprenticeship** means an agreement between an apprentice and an employer for a set period of time during which the apprentice works and receives training in the workplace.

**Associated entity** means an entity with which a Seller has concluded a Qualifying transaction.

**B-BBEE** means broad-based black economic empowerment.

**B-BBEE Controlled Company** means a juristic person having a shareholding or similar members interest in which black participants enjoy a right to Exercisable Voting Rights that is at least 51% of the total such rights measured using the Flow Through Principle.

**B-BBEE Owned Company** means a juristic person having a shareholding or similar members interest that is B-BBEE controlled, in which black participants enjoy a right to Economic Interest that is at least 51% of the total such rights measured using the Flow Through Principle.

**B-BBEE Act** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended.

**B-BBEE Amendment Act** means the Broad-Based Black Economic Empowerment Amendment Act, 46 of 2013.

**Benefit Factor** means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development and Supplier Development and Socio-Economic Development Contributions claimable under the Enterprise and Supplier Development Element and the Socio-Economic Development Element.

**Black Designated Groups** means:

Unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;

Black people who are youth as defined in the National Youth Commission Act of 1996;

Black people who are persons with disabilities as defined in the Code of Good Practice on Employment of people with disabilities issued under the Employment Equity Act;

Black people living in rural and under developed areas;

Black military veterans who qualify to be called a military veteran in terms of the Military Veterans Act 18 of 2011.

**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 other entities which has a total value of more than R50,000,000, measured using a standard valuation method. (Note: this has been changed from R20 million under the 2007 Code, thereby widening the pool of “new entrants”).

**Black people** is a generic term which means African, Coloureds and Indians:

Who are citizens of the RSA by birth or descent; or

Who became citizens of the RSA by naturalization (i) before 27 April 1994 (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

**Broad-based ownership scheme** means an ownership scheme which meets the rules set out in Annexe 100B of the Codes.

**Certified Learning Programme** means any Learning Programme for which the measured entity has:

(a) any form of independent written certificate as referred to in the “Learning Achievements” column of the Learning Programme 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 the Skills Development element 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.

**Codes** means the Codes of Good Practice including all statements as issued under Section 9 of the B-BBEE Act, as amended.

**Companies Act** means the Companies Act, No. 71 of 2008 as amended or substituted.

**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.

EAP means the 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 Flow Through principles.

**EE Act** means the Employment Equity Act of 1998, as amended.

**EE Regulations** means the regulations under the Employment Equity Act.

Employee with a disability 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, align with the Employment Equity Act.

**Employee ownership scheme** means a worker or employee scheme.

**Employed learner** means in terms of Section 18(1) of the Skills Development Act, a learner that was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded. The learner's contract of employment is therefore not affected by the agreement.

**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) Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are at least 51% black owned or at least 51% black women owned.

**Entity** means a legal entity or a natural or juristic person conducting a business, trade or profession in the Republic of South Africa.

**Exercisable Voting Right** means a voting right of a participant that is not subject to any limit.

**Fronting practice** means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the B-BBEE Act or the implementation of any of the provisions of the B-BBEE Act including but not limited to practices in connection with a B-BBEE initiative:

(a) in terms of which black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;

(b) in terms of which the economic benefits received as a result of the broad-based black economic empowerment status of an enterprise do not flow back to black people in the ratio specified in the relevant legal documentation;

(c) involving the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of broad-based black economic empowerment compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person;

(d) involving the conclusion of an agreement with another enterprise in order to achieve or enhance broad-based black economic empowerment status in circumstances in which –

(i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;

(ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available;

(iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.

**Internship** means an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work.

**Learnership** means a work-based route to a qualification. It is a workplace education and training programme comprising both structured practical workplace (on-the-job) experience and structured theoretical training.

**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.

**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 of the Codes.

**Measured Entity** means an entity as well as an organ of state or public entity subject to measurement under the Codes.

**51% Black owned** means an entity in which (a) black people hold at least 51% of the exercisable voting rights as determined under Code Series 100 (b) black people hold at least 51% of the economic interest as determined under Code Series 100; and (c) has earned all the points for the Net Value under Ownership element.

**51% Black Women owned** means an entity which (a) Black women hold at least 51% of the exercisable voting rights as determined under the Ownership element (b) Black women hold at least 51% of the economic interest as determined under the Ownership element, and (c) has earned all the points for Net Value under the Ownership element.

**Net Profit After Tax** means the operating profit of a measured entity after tax. It incorporates both the equity/loss figures and abnormal items, but excludes extraordinary items as determined by (GAAP) Generally Accepted Accounting Practices.

**Net Profit Before Tax** means the operating profit of a measured entity before tax. It incorporates both the equity/loss figures and abnormal items, but excludes extraordinary items as determined by (GAAP) Generally Accepted Accounting Practices.

**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.



**Qualifying Enterprise and Supplier Development Contributions** means a collective term describing Enterprise Development and Supplier Development Contributions targeting EME's and QSE's which are at least 51% black owned or at least 30% black women owned, black youth in rural, and underdeveloped areas in the Enterprise and Supplier Development element.

**Start-Up Enterprise** means a recently formed or incorporated entity that has been in operation for less than 1 year, and does not include any newly constituted enterprise which is merely a continuation of a pre-existing enterprise.

**Socio-Economic Development Contributions** means monetary or non-monetary contribution implemented for communities, natural persons or groups of natural persons where at least 75% of the beneficiaries are black people. The objective of Socio-Economic Development Contributions is the promotion of sustainable access for the beneficiaries to the economy. SED Contributions commonly take the following forms: (a) development programmes for women, youth, people with disabilities, people living in rural areas (b) support of healthcare and HIV/AIDS programmes (c) support for education programmes, resources and materials at primary, secondary and tertiary education level, as well as bursaries and scholarships (d) community training, skills development for unemployed people and adult basic education and training, or (e) support of arts, cultural or sporting development programmes.

**Target** means targets for the various elements in the Generic and QSE Scorecard.

**Voting Rights** 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 and QSE Scorecards.



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