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Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 564 Pretoria, 6 June / Junie 2012 No. 35423

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GENERAL NOTICE

NOTICE 485 OF 2012

Issued in terms of Section 9(1) of the B-BBEE Act 53, 2003

(DEPARTMENT OF TRADE AND INDUSTRY)

CODES OF GOOD PRACTICE ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT

Whereas I, **Dr Rob Davies**, Minister of Trade and Industry:

(a) Having issued the Draft Information and Communication Technology Sector Code (Draft ICT Sector Code) for public comment in terms of Section 9(5) of the Broad Based Black Economic Empowerment Act (Act No. 53 of 2003) on **31st May 2011** in terms of which;

(b) the public and interested parties were invited to comment on the Draft Sector Code for **60 days** from the date on which the Draft Sector Code was published,

(c) Now publish the ICT Sector Charter as a Sector Code on black economic empowerment in terms of Section 9(1) of the B-BBEE Act 53 of 2003.

This Notice is effective from the date of publishing and means that the ICT Sector Code is binding on all stakeholders operating in the ICT Sector.

Dr Rob Davies, MP
MINISTER OF TRADE AND INDUSTRY
DATE: 1/4/2012

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ICT SECTOR CODE

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ICT SECTOR CODE FOR BLACK ECONOMIC EMPOWERMENT

PREAMBLE

Introduction

The ICT Sector stakeholders comprising the Broadcasting, Electronics, Information Technology and Telecommunications sub-sectors; together with participants from the social partners, namely Government, Labour, Community, and ICASA, initiated a process of developing a Black Economic Empowerment CODE for the ICT Sector.

The Need for Economic Empowerment

- Under the previous apartheid system, a plethora of policies and legislation was promulgated with the sole objective of denying black people, including black women, access to and control of South Africa's economic productive resources and skills based purely on race and gender considerations;

- More than a decade after the demise of this apartheid system, and in spite of the promulgation of a broad range of policy and legislative instruments introduced by the democratic Government aimed at redressing the imbalances of the past, the majority of South Africans are still excluded from ownership and control of economically productive assets and possession of strategic skills to the detriment of economic development, employment creation and poverty eradication;

- Growth and prosperity in South Africa's economy has not been realized to its full potential due to a lack of meaningful participation by the majority of black South Africans, including black women, in the national economy, and particularly in the ICT sector;

- The Broad Based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act) and government's generic Black Economic Empowerment Codes of Good Practice, aims to address inequities resulting from the systematic exclusion of black people from meaningful participation in the economy. The ICT Code of Good Practice aims to do this for the ICT sector.

ICT Sector Resolution

Recognising the cross-cutting nature of ICTs and its role in the social and economic development of our country;
Therefore, we, the ICT Sector stakeholders, resolve and commit to:

- The objectives of the B-BBEE Act and to promote its effective implementation in the ICT sector;
- Bridge the "digital divide" by actively promoting access to ICTs;
- Stimulate and support growth in the ICT sector;
- Advance economic and social transformation in the ICT sector;
- Contribute towards the reduction of unemployment and poverty alleviation;
- Support skills development and training initiatives;
- Foster equity and address the legitimate economic aspiration of all South Africans;
- Provide an enabling environment conducive to transparency, fairness, and consistency when adjudicating on matters related to BEE in the ICT sector; and

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- Comply with the requirements of the ICT Sector Code as defined hereunder and where possible meet and exceed targets across the sector.

Gazetting of the ICT Sector CODE

Having initiated the process of developing the BEE CODE for the ICT sector, we therefore propose this ICT Sector CODE to be gazetted as a Code of Good Practice for the ICT sector in terms of Section 9(1) of the B-BBEE Act, (B-BBEE Act 53 of 2003).

The Sector Code shall remain effect until amended substituted or repeal under section 9 of the Act. The Minister of Communications will review the ICT Sector Code following the end of the tenth year following the commencement date of this statement; despite the aforementioned, annual reviews will take place to monitor the implementation of B-BBEE throughout the economy

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ICT Code Series	Code Title
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300	Measurement of the Employment Element of Broad-Based Black Economic Empowerment
400	Measurement of the Skills Development Element of Broad-Based Black Economic Empowerment
500	Measurement of the Preferential Procurement Element of Broad-Based Black Economic Empowerment
600	Measurement of the Enterprise Development Element of Broad-Based Black Economic Empowerment
700	Measurement of the Socio-Economic Development Element of Broad- Based Black Economic Empowerment
800	Measurement of Qualifying Small Enterprises of Broad-Based Black Economic Empowerment

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004	ICT Code series 000 -	Scorecards for specialised Enterprises
100	ICT Code series 100 -	The general principles for measuring Ownership
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300	ICT Code series 300 -	The general principles for measuring Employment Equity
400	ICT Code series 400 -	The general principles for measuring Skills Development
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600	ICT Code series 600 -	The general principles for measuring Enterprise Development
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Special Index for Qualifying Small Enterprises

Statement Number	**ICT Code Series and Statement Title**	
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801	ICT Code series 800 -	Ownership for Qualifying Small Enterprises
802	ICT Code series 800 -	Management Control for Qualifying Small Enterprises
803	ICT Code series 800 -	Employment Equity for Qualifying Small Enterprises
804	ICT Code series 800 -	Skills Development for Qualifying Small Enterprises
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806	ICT Code series 800 -	Enterprise Development for Qualifying Small Enterprises
807	ICT Code series 800 -	Socio-Economic Development for Qualifying Small Enterprises

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ICT CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 000: GENERAL PRINCIPLES AND THE SCORECARD

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

Arrangement of this statement

1. Objectives of this statement
2. Key principles
3. Application of the ICT Sector CODE
4. Eligibility as an Exempted Micro-Enterprise
5. Eligibility as a Qualifying Small Enterprise
6. Start-up enterprises
7. The Elements of B-BBEE in terms of the Scorecard
8. The ICT Sector Scorecard
9. Enhanced recognition for certain categories of black people
10. Framework for the Accreditation of BEE Verification Agencies
11. Transitional period
12. Adjustment of thresholds
13. Amendments and Duration of the ICT Codes

1. Objectives of this statement

The objectives of this statement are to:

1.1 Specify interpretative principles of B-BBEE:

1.2 Specify the application of the ICT Sector CODE and the basis for measurement under the ICT Codes;

1.3 Specify the qualifying thresholds for businesses to qualify as Exempted Micro-Enterprises (EME) or Qualifying Small Enterprises (QSE);

1.4 Specify the method of measuring start-up enterprises;

1.5 Specify the elements of B-BBEE measurable under the Scorecard;

1.6 Specify the Scorecard;

1.7 Specify the basis for determining compliance by entities with the ICT Sector CODE;

1.8 Provide for the Transitional Period before the compulsory use of the Scorecard starts; and

1.9 Define the duration for the applicability of the ICT Sector CODE.

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2. Key principles

2.1 The fundamental principle for measuring B-BBEE compliance is that substance takes precedence over legal form.

2.2 In interpreting the provisions of the ICT Sector CODE any reasonable interpretation consistent with the objectives of the Act and the B-BBEE Strategy must take precedence.

2.3 The basis for measuring B-BBEE initiatives under the ICT Sector CODE is the B-BBEE compliance of the measured entities at the time of measurement.

2.4 Any misrepresentation or attempt to misrepresent any enterprise's true B-BBEE Status may lead to the disqualification of the entire scorecard of that enterprise.

2.5 Initiatives which split, separate or divide enterprises as a means of ensuring eligibility as an Exempted Micro-Enterprise, a Qualifying Small Enterprises or a Start-Up Enterprise are a circumvention of the Act and may lead to the disqualification of the entire scorecard of those enterprises concerned.

2.6 Any representation made by an Entity about its B-BBEE compliance must be supported by suitable evidence or documentation. An Entity that does not provide evidence or documentation supporting any initiative, must not receive any recognition for that initiative.

2.7 Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, consistently in all other applicable calculations in this statement.

2.8 Where the ICT Sector CODE is silent on certain provisions, the provisions of the Generic Code shall take precedence.

3. Application of the ICT Sector CODE

3.1 The following entities are measurable under the ICT Sector CODE:

3.1.1 This Sector CODE applies to all persons, organisations and entities operating in the ICT Sector in South Africa;

3.1.2 All public entities listed in schedule 2 or schedule 3 (Parts A and C) of the Public Finance Management Act that fall within the ICT sector;

3.1.3 any public entity listed in schedule 3 (Parts B and D) which are trading entities which undertake any business with any organ of state, public entity or any other Enterprise that fall within the ICT sector; and

3.2 The basis for measuring the B-BBEE compliance of an entity in terms of paragraph 3.1 is-

3.2.1 Paragraph 4, in the case of an Exempted Micro-Enterprise (EME);

3.2.2 The QSE statements in Code 800, in the case of a Qualifying Small Enterprise (QSE);

3.2.3 The Scorecard, in the case of other enterprises.

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4. Eligibility as an Exempted Micro-Enterprise

4.1 Any enterprise with an annual Total Revenue of R 5 million or less qualifies as an Exempted Micro-Enterprises.

4.2 Exempted Micro-Enterprises are deemed to have B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% under paragraph 6.3.

4.3 Despite paragraph 4.2, an Exempted Micro-Enterprise qualifies for a promotion to a B-BBEE Status of "Level Three Contributor" having a B-BBEE procurement recognition of 110% under paragraph 6.3 if it is – more than 50% owned by black people or by black women.

4.4 Exempted Micro-Enterprises are allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to the next procurement recognition level.

4.5 Sufficient evidence of qualification as an Exempted Micro- Enterprise is an auditor's certificate or similar certificate issued by an accounting officer or verification agency.

5. Eligibility as a Qualifying Small Enterprise

5.1 Any enterprise with an annual Total Revenue of between R5 million and R35 million qualifies as a Qualifying Small Enterprise.

5.2 A Qualifying Small Enterprise must select any four of the seven Elements of B-BBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 800. Where a Qualifying Small Enterprise does not make a selection, its four best element scores will be used for the purposes of measurement.

6. Start-up enterprises

6.1 Start-up enterprises must be measured as Exempted Micro-Enterprises under this statement for the first year following their formation or incorporation. This provision applies regardless of the expected total revenue of the start-up enterprise.

6.2 Start-up Enterprises are deemed to have a B-BBEE Status of "Level Four Contributor" having a B-BBEE procurement recognition of 100% under this paragraph

6.3 In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status.

6.4 Despite paragraph 6.1 and 6.2, Start-up Enterprises must submit a QSE Scorecard when tendering for any contract, or seeking any other business covered by section 10 of the Act, with a value higher than R 5 million but less than R35 million. For contracts above R35 million they should submit the scorecard. The preparation of such scorecards must use annualised data.

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7. The Elements of B-BBEE in terms of the Scorecard

7.1 The Ownership Element, as set out in Code series 100, measures the effective ownership of enterprises by black people.

7.2 The Management Control Element, as set out in Code series 200, measures the effective control of enterprises by black people.

7.3 The Employment Equity Element, as set out in Code series 300, measures initiatives intended to achieve equity in the workplace under the Act, and the Employment Equity Act.

7.4 The Skills Development Element, as set out in Code series 400, measures the extent to which employers carry out initiatives designed to develop the competencies of black employees.

7.5 The Preferential Procurement Element, as set out in Code series 500, measures the extent to which enterprises buy goods and services from suppliers with strong B-BBEE procurement recognition levels.

7.6 The Enterprise Development Element, as set out in Code series 600, measures the extent to which Enterprises carry out initiatives intended to assist and accelerate the development and sustainability of other Enterprises.

7.7 The Socio-Economic Development and Sector Specific Contributions Element, as set out in Code series 700, measures the extent to which enterprises carry out general and ICT sector specific initiatives that contribute towards Socio-Economic Development and that promote access to the economy for black people. Two-thirds of such spend must be spent on ICT sector specific initiatives.

8. The ICT Sector Scorecard

8.1 The following table represents the Scorecard and contains the:

8.1.1 Elements of the scorecard:

8.1.2 Weightings, and

8.1.3 Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700)

Element	Weighting	Code series reference
Ownership	20 points	100
Management control	10 points	200
Employment equity	10 points	300
Skills development	17points	400
Preferential procurement	20 points	500
Enterprise Development	11 points	600
Socio-Economic Development initiatives	12 points	700

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8.2 Based on the overall performance of a Measured Entity using the Scorecard. it receives one of the following B-BBEE Status-:

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

9. Enhanced recognition for certain categories of black people

Throughout the ICT Sector CODE, various criteria appear which advance the interests of certain categories of black people. These include:

9.1 Black women who should form between 40 and 50% of the beneficiaries of all Elements of the Scorecard: and

9.2 Black people with disabilities, black youth, black people living in rural areas and black unemployed people who must form between 2 and 3% of the beneficiaries of all Elements of the Scorecard.

10. Framework for the Accreditation of BEE Verification Agencies

10.1 Verification of BEE compliance is encouraged and to this end, the dti will from time to time issue clear guidelines on the verification process.

10.2 SANAS is a national accreditation body that operates in compliance with the requirements for accreditation bodies as defined in the International ISO/IEC Guide 62 and ISO 17011.

10.3 Accreditation of BEE verification agencies will be conducted by SANAS and any other designated body on behalf of the dti in terms of the set accreditation criteria..

10.4 Such Accreditation Standards govern the terms and conditions, on which the Accreditation Body may grant, refuse to grant, revoke or suspend an accreditation of a Verification Agency.

10.5 Those verification agencies wishing to apply for accreditation will do so through existing processes..

10.6 The dti encourages the establishment of an independent industry Body that will provide guidance to the verification industry through the development and maintenance of high quality and reliable BEE verification services.

10.7 The dti will from time to time develop Verification Methodology and other relevant practices that will be used as standards by all verification agencies.

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10.8 The dti together with the Accreditation Body will implement such mechanisms as may be necessary to ensure that Verification Certificates are accurate and reliable.

10.9 The dti will establish a publicly accessible central database containing the information underlying each verification Certificate.

11. Transitional period

11.1 The ICT Sector Code shall come into effect from the date of gazette. Entities in the ICT Sector shall apply the ICT Sector Code for measurement of their B-BBEE status.

12. Adjustment of Thresholds

12.1 The Minister of Trade and Industry may, by notice in the Gazette, adjust the thresholds in paragraphs 4 to 6. Any such changes apply to compliance reports prepared for enterprises after a 12-month period following the gazetting of the adjustment.

13. Amendments and Duration of the ICT Codes

13.1 The ICT Codes shall be effective and legally binding from the date of gazette to 31st April 2026 with a midterm five year review on the 31st April 2017 or until amended, substituted or repealed under section 9 of the Act.

13.2 The process for the amendment of the ICT Codes will follow the process set out in the Generic Codes for the development of Sector Codes. Any amendments to the Generic Codes must result in a review of the ICT Codes for purposes of harmonisation.

13.3 The Minister of Trade and Industry will review the Generic Codes following the end of the tenth year following the commencement date of the Generic Codes. Despite the aforementioned, annual reviews will take place to monitor the implementation of B-BBEE throughout the economy. If, as a result of such review any changes are made to the Generic Codes, the ICT Codes will also be harmonised with the Generic Codes following the same process set out in 13.2

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CODE SERIES 000: FRAMEWORK FOR MEASURING BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 004: Scorecards for SPECIALISED Enterprises

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

Arrangement of this statement

1. Objective of this statement
2. General principles
3. The Adjusted Scorecard
4. The Adjusted Qualifying Small Enterprises Scorecard
5. Important Clarification

1. Objective of this statement

The objectives of this statement are to:

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

1.1.1 Companies limited by guarantee:

1.1.2 Higher Education Institutions;

1.1.3 Non-profit Organisations;

1.1.4 Public entities and other Enterprises wholly owned by organs of state;

1.1.5 Public Benefit Schemes; and

1.1.6 Section 21 companies; and

1.2 Specify scorecards applicable to Measured Entities subject to this statement.

2. General principles

2.1 Public entities and other Enterprises wholly owned by organs of state are incapable of evaluation of black ownership under Code series 100

2.2 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.

2.3 Companies limited by guarantee and section 21 companies have no shareholding. They are incapable of evaluation of black ownership under Code series 100. This does not imply that companies limited by guarantee and section 21 companies sharing in the ownership of other Enterprises cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.

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2.4 Non-profit Organisations and Public Benefit Organisations generally do not have any beneficial ownership and are incapable of evaluation of black ownership under Code series 100. This does not imply that Non-profit Organisations and Public Benefit Organisations sharing in the ownership of other Enterprises as broad-based ownership schemes cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.

2.5 Wherever any of the entities listed in paragraphs 1 and 2 require evidence of their own B-BBEE compliance, they will use the Adjusted Scorecard. If those entities are also Qualifying Small Enterprises, they will use the Adjusted Qualifying Small Enterprises Scorecard.

3. The ADJUSTED Scorecard

3.1 The following table represents the Adjusted Scorecard and contains the:

3.1.1 Elements of the scorecard;

3.1.2 Weightings, and

3.1.3 Code series reference that specifies the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700).

Element	Weighting	Code series reference
Management control	15 points	200
Employment equity	10 points	300
Skills development	22 points	400
Preferential procurement	20 points	500
Enterprise Development	11 points	600
Socio-Economic Development	22 points	700

3.2 All other terms of statement 000 apply to Measured Entities subject to this statement. mutatis mutandis.

4. The ADJUSTED Qualifying Small Enterprises Scorecard

4.1 The following table represents the Adjusted Scorecard and contains the:

4.1.1 Elements of the scorecard:

4.1.2 Weightings, and

4.1.3 Code series reference that specifies the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - 700).

Element	Weighting	Code series reference
Management control	25 points	200
Employment equity	25 points	300
Skills development	25 points	400
Preferential procurement	25 points	500
Enterprise Development	25 points	600
Socio-Economic Development	25 points	700

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4.2 A Measured Entity, subject to this statement, that is a Qualifying Small Enterprise must choose any four of the six Elements of B-BBEE against which their B-BBEE compliance will be measured under the Adjusted Qualifying Small Enterprise Scorecard.

5. Important Clarification

The status of Socio-Economic Development Contributions made to any of the types of entities in paragraphs 1 and 2 under Code series 700 is not dependent on such entity's scorecard result, but rather the nature of the contribution itself and the identity of that contribution's beneficiaries.

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

STATEMENT 100: THE GENERAL PRINCIPLES FOR MEASURING OWNERSHIP

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

Arrangement of this statement

1. Objectives of this statement
2. The ownership scorecard
3. Key measurement principles
4. Broad-Based Ownership Scheme
5. Private Equity Funds
6. Section 21 companies, companies limited by guarantee
7. Trusts
8. Options and Share Warrants
9. Equity Instruments carrying preference rights
10. Realisation points
11. The bonus points

1. Objectives of this Statement

The objectives of this statement are to:

1.1 Specify the scorecard for measuring the ownership Element of Broad-Based Black Economic Empowerment (B-BBEE);

1.2 Define the key measurement principles associated with the ownership Element of B-BBEE;

1.3 Specify the specific measurement principles applicable to various types of Enterprises;

1.4 Specify the specific measurement principles applicable to various types of Equity Instruments;

1.5 Specify the formula for measuring Voting Rights, Economic Interest, Realisation Points and bonus points.

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2. The Ownership Scorecard

The following table represents the indicators and method for calculating a score for ownership under this statement:

Category	Ownership indicator			Weighting points	Compliance target
2.1	Voting rights:				
	2.1.1	Exercisable Voting Rights in the Enterprise in the hands of black people		3	30% *
	2.1.2	Exercisable Voting Rights in the Enterprise in the hands of black women		2	10%
2.2	Economic Interest:				
	2.2.1	Economic Interest of black people in the Enterprise		4	30% *
	2.2.2	Economic Interest of black women in the Enterprise		2	10%
	2.2.3	Economic Interest of the following black natural people in the Enterprise:		1	2.5%
		2.2.3.1	black designated groups;		
		2.2.3.2	black Participants in Employee Ownership Schemes;		
		2.2.3.3	black beneficiaries of Broad based Ownership Schemes; or		
		2.2.3.4	Black Participants in Co-operatives		
2.3	Realisation points:				
	2.3.1	Ownership fulfilment		1	Refer to paragraph 10.1
	2.3.2	Net Value		7	Refer to Annexe 100 (C) paragraph 4 as contained in the DTI Codes
2.4	Bonus points:				
	2.4.1	Involvement in the ownership of the Enterprise of black new entrants:		2	10%
	2.4.2	Involvement in the ownership of the Enterprise of black Participants:		1	10%
		2.4.2.1	in Employee Ownership Schemes;		
		2.4.2.2	of Broad-Based Ownership Schemes; or		
		2.4.2.3	Co-operatives		

3. Key Measurement Principles

3.1 General principles:

* To be read with paragraph 6.5 of this statement

* To be read with paragraph 6.5 of this statement

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3.1.1 An Enterprise receives points for participation by black people in its rights of ownership, using the ownership scorecard in paragraph 2. Black people may hold their rights of ownership in a Measured Entity as direct Participants or as Participants through some form of business such as:

3.1.1.1 A company with shares:

3.1.1.2 A close corporation:

3.1.1.3 A co-operative:

3.1.1.4 Any form of juristic person recognised under South African law:

3.1.1.5 A partnership or other association of natural persons:

3.1.1.6 A Broad-Based Ownership Scheme:

3.1.1.7 An Employee Ownership Scheme; and

3.1.1.8 A Trust.

3.2 The Flow-Through Principle:

3.2.1 As a general principle, when measuring the rights of ownership of any category of black people in a Measured Enterprise, 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.

3.2.2 The method of applying the Flow-Through Principle across one or more intervening juristic persons is as follows:

3.2.2.1 Multiply the percentage of the Participants rights of ownership in the juristic persons through which those rights pass by the percentage rights of ownership of each of those juristic persons successively to the Measured Enterprise; and

3.2.2.2 The result of this calculation represents the percentage of rights of ownership held by the Participant.

3.3 The Modified Flow-Through Principle:

3.3.1 The Modified Flow-Through Principle applies to any BEE owned or controlled company in the ownership of the Measured Enterprise.

3.3.2 In calculating Exercisable Voting Rights under paragraph 2.1.1. and Economic Interest under paragraph 2.2.1 the following applies: Where in the chain of ownership, black people have a flow-through level of participation in excess of 50%, then only once in that chain may such black participation be treated as if it were 100% black.

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3.3.3 The Modified Flow-Through Principle may only be applied in the calculation of the indicators in paragraphs 2.1.1 and 2.2.1. In all other instances, the Flow-Through Principle applies.

3.4 The Exclusion of specified entities when determining ownership:

3.4.1 When determining ownership in a measured entity, ownership held directly by organs of state or public entities must be excluded.

3.4.2 In calculating their Ownership score, Measured Enterprises must apply the Exclusion Principle to any portion of their Ownership held by Organs of State or Public Entities

3.4.3 Despite paragraph 3.4.1 and 3.4.2, the Minister of Trade and Industry may by notice in the gazette, designate certain Public Entities as BEE Facilitators. In calculating their Ownership score, Measured Enterprises must treat BEE Facilitators as having rights of Ownership held:

3.4.3.1 100% by Black People:

3.4.3.2 40% by Black Women:

3.4.3.3 10% by black designated groups;

3.4.3.4 Without any acquisition debts; and

3.4.3.5 Without any third-party rights.

3.4.4 When determining ownership in a measured entity, rights of ownership of Mandated Investments may be excluded. The maximum percentage of the ownership of any measured entity that may be so excluded is 40%.

3.4.5 A Measured Entity electing not to exclude Mandated Investments when it is entitled to do so, may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the Measured Entity and originating from that Mandated Investment.

3.4.6 A Measured Entity cannot selectively include or exclude Mandated Investments and an election to exclude one mandated investment is an election to exclude all Mandated Investments and visa versa.

3.5 The recognition of ownership after the sale or loss of shares by black participants:

3.5.1 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:

3.5.1.1 The black participant has held shares for a period of 3 years;

3.5.1.2 Value must have been created in the hands of black people:

3.5.1.3 Transformation has taken place within the measured enterprise.

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

3.5.3 In the case of a loss of shares by the black investor, the following additional rules apply:

3.5.3.1 A written tripartite agreement between the Measured Enterprise, the black Participant and a lender must record the loan or security arrangement, unless the Measured Entity is the lender; and

3.5.3.2 The period over which the points were allocated or recognised will not exceed the period over which the shares were held.

3.5.4 The ownership points under this paragraph that are attributable to the Measured Entity will be calculated by multiplying the following elements;

3.5.4.1 The value created in black hands as a percentage of the value of the Measured Entity at the date of the loss of shares as a percentage of Measured Entity's value;

3.5.4.2 The B-BBEE status of the Measured Entity based on the balanced scorecard at the date of measurement; and

3.5.4.3 The ownership points that were attributable to the Measured Enterprise on the date of sale or loss.

4. Broad-based Ownership and Employee Ownership Scheme's

4.1 Black Participants in Broad-Based Ownership Schemes and Employee Share Ownerships Schemes holding rights of ownership in a Measured Entity may contribute:

4.1.1 A maximum of 40% of the total points on the ownership scorecard of the Measured Entity if they meet the qualification criteria set out in Annexe 100(B).

4.1.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out in Annex 100(B).

5. Private Equity Funds

5.1 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:

5.1.1 More than 50% of any Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership, be held by black people;

5.1.2 More than 50% of profits made by the Private Equity Fund after realising any investment made by it, must by written agreement, accrue to black people;

5.1.3 The Private Equity Fund manager must be a BEE Owned Company as defined; and

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5.1.4 More than 50% of the value of funds invested by any Private Equity Fund must at all times be invested in black owned enterprises that were at least 25% black owned before the investment of the Private Equity Fund.

6. Special rules for certain companies

A Measured Entity may elect to include or exclude Section 21 companies or companies limited by guarantee for the purposes of measuring ownership in terms of this statement

6.1 A Section 21 company or company limited by guarantee that houses a Broad-Based Ownership Scheme or an Employee Ownership Scheme is subject to the provisions governing those types of schemes and not to this paragraph.

6.2 When a Measured Entity elects to exclude such companies, it can do so by excluding up to 40% of the level of their ownership completely from the determination of its compliance with the ownership target.

6.3 A Measured Entity electing not to exclude section 21 companies or companies limited by guarantee when it is entitled to do so, may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the Measured Entity and originating from those section 21 companies or companies limited by guarantee.

6.4 Black Participants in a Section 21 Company holding rights of ownership in a Measured Entity may contribute:

6.4.1 a maximum of 40% of the total points on the ownership scorecard of the Measured Entity if they meet the qualification criteria for Broad-Based Ownership Schemes set out in Annexe 100(B).

6.4.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out for Broad-Based Ownership Schemes in Annex 100(B).

6.5 If the rand value of the total BEE stake is in excess of R7.5billion, then the company will be considered to be compliant with the equity target in the scorecard. In the case of listed companies, the prescribed minimum free float (20%) will be excluded from computation of the target, subject to a minimum of 25.1% for the purposes of minority protection; In the case of SOE's, the target is 30% of that component of equity that is not in government hands.

The ICT Sector Codes deviates from the Generic Codes on the ownership target which has been increased to 30%. The substance of the deviation of the ICT sector Code from the Codes of Good Practice (25.1% +1) is the recognition by the ICT sector to accelerate the pace of transformation in the sector, thus ensuring more companies in the hands of black people. The ICT sector believes that given the pace of transformation and black ownership in the sector, it may take longer to bring about real transformation in the sector if the sector is to adopt the 25%+1 compliance target. This is also to recognize the uniqueness of the ICT sector and that it cannot be treated as any other sector, hence the deviation from the compliance target in the codes of good practice.

The R 7.5 Billion figure was agreed position by the industry as a catalyst to accelerate transformation. The figure was agreed for taking into consideration the size of entities in

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the sector. However, this is not a static figure it could change after a period of time in the process of transformation to ensure the targeted figure of 30% black ownership is achieved.

With regard to the free float of 20 percent, the Electronic Communications Act requires that for each company to be granted a license, 30% must be owned by HDIs. With regard to companies listed in the JSE, they are required to maintain a minimum of 20% free float, i.e. shares that are freely available to the investing public. This means that 20% of the issued share capital is not under the control of the officers of the company. It was then agreed that listed companies should have 30% of the issued share capital that could be under the control of the officers, meaning that 30% of the 80% of the issued share capital. This translates to 24% of the issued share capital. It was also agreed that black investors should have their position strengthened as they are minority shareholders. It was therefore agree that they should have 25.1% by which they could exercise negative control.

6.5.1 Application of R7.5bn

6.5.1.1 For calculation purposes, the measurement of compliance to the R7.5bn must only be applied to sub-criteria 2.11 and 2.2.1 of the ownership scorecard. Where a measured entity has satisfied the requirement of a BEE stake value in excess of R7.5bn, the measured entity will deemed to have achieved maximum points for sub-criteria 2.1.1 and 2.2.1.

6.5.1.2 For calculation of compliance to sub-criteria 2.1.2, 2.2.2 and 2.2.3, the percentage value held by Black Women and broad-based schemes in terms of the BEE State value must be determined and then such percentage must be used to calculate level of compliance against the required target/s.

6.5.1.3 When calculating the level of compliance for Net Value, where in excess of R7.5bn has been attained, the percentage of debt settled calculated against the opening debt value must be determined in order to calculate level of compliance met in accordance to the time-based graduation factor

6.5.1.4 Where the total BEE stake value is less than R7.bn, the score for sub-criteria 2.1.1 and 2.2.1 will be calculated using the actual percentage of black shareholding in the measured entity against the required target of 30%.

6.5.2 Review of R7.5bn

6.5.2.1 The ICT BEE Council must review annually the effect of R7.5bn before making recommendations for any changes;

6.5.2.2 When determining the extent of change to the R7.5bn the Council must take the following factors into account:-

6.5.2.2.1 The valuation of the company points to an overall enterprise value that is lower than the enterprise value at the date the original BEE transaction; or an overall market capitalisation of the JSE that is lower than the market capitalisation of the JSE at the date the original BEE transaction

6.5.2.2.2 Impact assessment if a company is not fairly valued by the market as, for example, in the instance where there has been a more than five percent decline in the share price of an enterprise over the preceding 4 quarters of a financial year; or the market capitalisation is lower than the fair value of a company as determined by an independent investment bank

6.5.2.2.3 Depth of liquidity in the market and capacity of the market to handle multiple BEE transactions from veritable sectors of the economy.

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6.5.2.3 The Council must publish such recommendations of change for public comment for a period of not less than 30 days.

7. Trusts

7.1 Black Participants in a Trust holding rights of ownership in a Measured Entity may contribute:

7.1.1 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 Annexe 100(B).

7.1.2 100% of the total points on the ownership scorecard of the Measured Entity if they meet the additional qualification criteria set out for Trusts in Annex 100(B).

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8. Options and share warrants:

8.1 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:

8.1.1 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;

8.1.2 the value of any Economic Interest is irrevocably transferred for the option period and paid to the holder of that instrument before the exercise of that right.

8.1.3 The value of an instrument must be determined by using a Standard valuation method for calculating the Net value.

9. Equity Instruments Carrying Preferent Rights

9.1 An Equity Instrument carrying preference rights is measurable in the same manner as an ordinary Equity Instrument.

9.2 An Equity Instrument carrying preference rights that has the characteristics of a debt, regardless of whether the debt is that of an Enterprise or of a Participant, is an ordinary loan. If the debt is that of a black Participant, it may be subject to measurement under Current Equity Interest.

9.3 In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured under current equity interest. The remainder is measurable as an ordinary equity instrument.

10. Net Value

10.1 Ownership Fulfilment occurs:

10.1.1 on the release of all black Participants in a Measured Entity from all third-party rights arising from the financing their transaction with the Measured Entity; or

10.1.2 if all black Participants in the Enterprise have never been subject to any such third-party rights.

10.1.3 A score of 7 points for Net Value is a requirement for awarding the Ownership Fulfilment point

11. The Bonus Points

11.1 A Measured Entity with 30% black Economic Interest, can receive a maximum of 2 bonus points for a 10% holding of Economic Interest by black new entrants.

11.2 A Measured Entity with 30% black Economic Interest, can receive a maximum of 1 bonus point for a 10% holding of Economic Interest by black Participants in:

11.2.1 Employee Ownership Schemes;

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11.2.2 Broad-Based Ownership Schemes; and

11.2.3 Co-Operatives.

Annexe 100A - Examples of Mandated Investments

Annexe 100(B) -RULES ON CERTAIN TYPES OF ENTERPRISES

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

STATEMENT 102: RECOGNITION IN THE SALE OF ASSETS

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

Arrangement of this statement

1. Objectives of this statement
2. Application
3. Key Measurement Principles
4. Measurement Principles
5. Recognition of Sale of Assets, Equity Instruments and Business

1. Objectives of this statement

The objectives of this statement are to:

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

1.2 Set out how the Ownership points will be determined.

2. Application

2.1 A transaction in terms of this statement may involve the sale of:

2.1.1.1 An asset;

2.1.1.2 A business; or

2.1.1.3 Equity Instruments in an Enterprise.

3. Key Measurement Principles

3.1 General principles:

3.1.1 A Seller that has concluded a transaction involving a sale of asset, Equity Instrument or business with an Associated Enterprise may claim the benefits provided for in this statement in its own Ownership Scorecard.

3.1.2 Where a Seller has claimed benefit in terms of the Ownership scorecard for the Sale of Asset, Equity Instrument or Business it may not claim benefits under the Enterprise Development Element.

3.2 Qualification Criteria:

3.2.1 For Ownership points to be recognised the transaction:

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3.2.1.1 Must result in the creation of sustainable businesses or business opportunities in the hands of black people; and

3.2.1.2 Result in the transfer of specialised skills or productive capacity to black people.

3.2.2 A Sale of Asset, Equity Instrument and Business must involve a separate Associated Enterprise which has:

3.2.2.1 No unreasonable limitations as to its clients or customers; and

3.2.2.2 Clients, customers or suppliers other than the Seller.

3.2.3 Any operational outsourcing arrangements between the Seller and the Associated Enterprise must be negotiated at arms-length on a fair and reasonable basis.

3.2.4 The following transactions do not constitute Qualifying Transactions:

3.2.4.1 transfers of business rights by way of license, lease or other similar legal arrangements not conferring unrestricted ownership: and

3.2.4.2 Sales of franchises by franchisors to franchisees, but includes sales of franchises from franchisees to other franchisees or to new franchisees.

4. Measurement Principles

4.1 The calculation of the ownership points in terms of paragraph 2.3.2. of the Ownership scorecard must be based on:

4.1.1 The value of the transaction.

4.1.2 The value of Equity Instruments held by black Participants in the Associated Enterprise;

4.1.3 The carrying value of the Acquisition Debt of black Participants in the Associated Enterprise; and

4.2 All calculations in terms of paragraph 4.1.1 to 4.1.3 must use a Standard valuation method.

4.3 The Seller may claim the point for Ownership Fulfilment only if both the Seller and the Associated Enterprise comply with the requirements for the award of that point.

4.4 Equivalency Percentages under this statement:

4.4.1 Apply only to the ownership indicators in paragraphs 2.1 and 2.2 of the Ownership Scorecard;

4.4.2 Do not apply to the ownership indicators in paragraphs 2.3 and 2.4 of the Ownership Scorecard.

4.5 The Seller must include the Equivalency Percentages in its own Ownership Scorecard as if those percentages arose from black ownership of Equity Instruments in the Seller. The

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Equivalency Percentages for the indicators in paragraphs 2.1 and 2.2 of the Ownership Scorecard can be calculated in terms of Annexe 102(A).

5. Recognition Of Sale Of Asset, Equity Instruments And Businesses

5.1 A Seller seeking recognition of a Transaction in its Ownership Scorecard must determine that recognition under paragraph 4 in compliance with paragraph 2.3 of statement 000:

5.1.1 For the first three years after the transaction, based on data current on date of measurement;

5.1.2 For each year thereafter, based on:

5.1.2.1 The Indicator Percentages at the date of measurement; and

5.1.2.2 The values of the Qualifying Transaction and benefit to the Seller at the date of measurement in the third year after the transaction.

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ANNEXE 102 (A)

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

STATEMENT 103: THE RECOGNITION OF EQUITY EQUIVALENTS

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

Arrangement of this statement

1. Objectives of this statement
2. Key measurement principles
3. Recognition of Equity Equivalent Programmes
4. Measurement of Equity Equivalent Contributions on the Ownership Scorecard
5. Two Specific Examples of Equity Equivalent Programmes
6. Specific rules on Multinationals

1. Objectives of this statement

The objectives of this statement are to:

1.1 Define the means by which companies may apply for recognition of Equity Equivalent Programmes;

1.2 Specify how contributing towards the Ownership Element of B-BBEE by entities applying for recognition of equity equivalents is measurable;

2. Key Measurement Principles

Any Equity Equivalent Contributions towards the Ownership Element of B-BBEE made by entity applying for recognition of equity equivalents are measurable against the value of their operations in the Republic of South Africa.

3. Recognition of Equity Equivalent Programmes

3.1 The Minister of Trade and Industry may, approve certain Equity Equivalent Programmes after the entity applying for recognition of equity equivalents has consulted with the Minister of Communications with respect to their equity equivalent proposal and the Minister of Communications has forwarded a recommendation to the Minister of Trade & Industry.

3.2 Any Equity Equivalent Programme forming part of a Sector Code constitutes an approved programme.

3.3 Equity Equivalent Programmes are preferably Sector Specific, but the Minister of Communications may consider requests for approval of programmes that are not Sector Specific.

3.4 Equity Equivalent Programmes may involve:

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3.4.1 Programmes with specific reference to the ICT sector that support initiatives such as:

3.4.1.1.1 Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' on matters relating to research and development, including intellectual property in the ICT Sector;

3.4.1.1.2 Partnering with black owned, black empowered, black engendered entities or SMMEs' in the expansion of manufacturing or assembling plants in South Africa;

3.4.1.1.3 Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' in the location of substantial new investments in South Africa; and

3.4.1.1.4 Establishing partnerships with black owned, black empowered, black engendered entities or SMMEs' in the placing of substantial new investments in global markets.

3.4.2 Programmes with specific reference to the ICT sector that support:

3.4.1.1 The Accelerated and Shared Growth Initiative for South Africa;

3.4.1.2 The Joint Initiative for Priority Skills;

3.4.1.3 The National Skills Development Strategy;

3.4.3 Programmes that promote enterprise creation in respect of cooperatives that are:

3.4.2.1 More than 50% owned by black people; or

3.4.2.2 More than 30% owned by black women; or

3.4.2.3 More than 50% owned by members of black designated groups;

3.4.4 Any other programmes that promote Socio-Economic advancement or contribute to the overall socio development of the Republic of South Africa.

3.5 Equity Equivalent Programmes must include:

3.5.1 A full description of programme objectives and projected outcomes;

3.5.2 Qualification criteria for participation in the programme;

3.5.3 Timelines for implementation and delivery with milestones against which progress is measurable: and

3.5.4 Details about the sponsors of the programme.

3.6 Equity Equivalent Programmes are limited:

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3.6.1 an ICT enterprise or entity, which could suffer inherent commercial harm to its business due to, amongst others, legal, technological or policy barriers, which are incompatible with the sale of equity;

3.6.2 a SOE, and/or

3.6.3 a SMME, and/or

3.6.4 Community entities not for profit

3.7 Equity Equivalent Programmes may have any of the following as their beneficiaries:

3.7.1 Enterprises in which:

3.7.1.1 Black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest;

3.7.1.2 Black women hold more than 30% of the exercisable voting rights and more than 30% of the economic interest; and

3.7.1.3 Black Designated Groups hold more than 50% of the exercisable voting rights and more than 50% of the economic interest; or

3.7.2 Communities, natural persons or groups of natural persons where at least 75% of the beneficiaries are black people and the same percentage of economic value is derived by black people.

4. Measurement of Equity Equivalent Contributions on the Ownership Scorecard

4.1 The ownership score of a Multinational participating in an Equity Equivalent Programme is calculated in terms of paragraph 4.3. A Multinational participating in an Equity Equivalent Programme cannot receive any points for ownership under any statement in Code Series 100 other than this statement.

4.2 Contributions to Equity Equivalent Programmes are measured as actual contributions made using the general principle set out in code series 600 and 700 against any of the following targets:

4.2.1 30% of the value of the South African operations of the entity apply for the the recognition of Equity Equivalents determined using a Standard Valuation; or

4.2.2 30% of total net Profit after tax of the South African operations of the entity applying for recognition of equity Equivalents; or

4.2.3 4% of Total Revenue from its South African operations annually over the period of continued measurement

4.3 The Ownership Score under an Equity Equivalent Programme using either of the targets in paragraphs 4.2 must be calculated in terms of Annexe 103(A).

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5. Examples of Equity Equivalent Programmes

5.1 Enterprise creation:

5.1.1 If the equity equivalent contribution of the entity involves the creation of a new Enterprise:

5.1.1.1 The new Enterprise must qualify as a Value-Adding Enterprise;

5.1.1.2 The creation of the new Enterprise must comply with the requirements for a Qualifying Transaction as defined in statement 102;

5.1.1.3 The creation of the new Enterprise cannot contribute to the Multinational's score under Code series 600; and

5.1.1.4 The equity equivalent contribution must involve the provision of interest free loans, No-Gain Grants or Human Capital Investments to the new Enterprise equivalent in value to 50% of the new Enterprise's projected operational costs for the first 3 years following its establishment.

5.2 Investment in social advancement:

5.2.1 An equity equivalent contribution of the entity applying for recognition of Equity Equivalents that involves enhanced Socio-Economic Development.

5.2.1.1 Must comply fully with Code series 700; and

5.2.1.2 Cannot form part of the score of the entity applying for recognition of Equity Equivalents under Code series 700.

6. Specific Rules on Entities Applying for Recognition of Equity Equivalents

6.1 Any contributions towards the ownership Element of B-BB-BBEE made by entities applying for recognition of Equity Equivalents are measurable against the value of their operations in the Republic of South Africa.

6.2 In calculating their ownership score, entities applying for recognition of Equity Equivalents must apply the Exclusion Principle to any portion of the business value of their South African operations gained from non-South African sources. A Standard valuation method must be used to determine the value of the South African operations.

6.3 In calculating their ownership score, entities applying for recognition of Equity Equivalents may recognise sales of Equity Instruments in non-South African Enterprises to black people, on the following basis:

6.3.1 The non-South African Enterprise must form part of the chain of ownership between the entities applying for recognition of Equity Equivalents and its eventual holding company; and

6.3.2 The transaction must comply with South African exchange control requirements; and

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6.3.3 The percentage of the value of the Equity Instruments sold to the value of the business of the entity applying for recognition of Equity Equivalents represents the recognisable black claim to Economic Interest; and

6.3.4 The percentage of Exercisable Voting Rights ceded to the buyers of the Equity Instruments in the business of the entity applying for recognition of Equity Equivalents represents the recognisable black right to Exercisable Voting Rights; and

6.3.5 The rights of ownership in the Equity Instruments are comparable to rights that would have accrued had the Equity Instrument B- BBEE in the business of the entity applying for recognition of Equity Equivalents.

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CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 200: THE GENERAL PRINCIPLES FOR MEASURING MANAGEMENT CONTROL

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

Arrangement of this statement

1. Objectives of this statement
2. Management control scorecard
3. Common examples of Top Management
4. Key measurement principles
5. Calculating the Adjusted Recognition for Gender
6. Calculating compliance

1. Objectives of this Statement

The objectives of this statement are to specify:

1.1 The scorecard for measuring the Management Control Element of B- BBEE;

1.2 Define the key measurement principles associated with the Management Control Element of B-BBEE; and

1.3 The calculations for measuring compliance.

2. Management Control Scorecard

The following table represents the indicators and method for calculating a score for Management Control under this statement:

Category	Management Control Indicator		Weighting points	Compliance Target
2.1	Board participation:			
	2.1.1	Exercisable Voting Rights of black Board members using the Adjusted Recognition for Gender	3	50%
	2.1.2	Black Executive Directors using the Adjusted Recognition for Gender	2	50%
2.2	Top Management:			
	2.2.1	Black Senior Top Management using the Adjusted Recognition for Gender	3	40%
	2.2.2	Black Other Top Management using the Adjusted Recognition for Gender	2	40%
2.3	Bonus points:			
	Black Independent Non-Executive Board Members		1	40%

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3. Common Examples of top Management

The inclusion of the following examples of Top Management is for guidance purposes only:

3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, the chief financial officer and other people holding similar positions.

3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, the head of human resources and other people holding similar positions.

4. Key Measurement Principles

4.1 A Measured Entity receives points by meeting the targets for participation of black people and black women at Board and Top Management level.

4.2 A Measured Entity must use the data in calculating its score under the Management Control scorecard used in its returns filed with the Department of Labour under the Employment Equity Act. This does not apply to Measured Entities exempt from filing such returns.

4.3 A Measured Entity that does not distinguish between Top Management and Senior Management may include its Senior Management under this statement. If a Measured Entity adopts this approach -

4.3.1 The corresponding targets for Senior Management in Code series 300 will apply to the Management Control scorecard;

4.3.2 Senior Management included in this statement is not measurable under statement 300.

4.4 If a Measured Entity does not distinguish between Senior Top Management and Other Top Management, then Top Management is measurable as a single indicator with a Weighting of 5 points under paragraphs 2.2.1 and 2.2.2.

4.5 If Measured Entities do appoint Non-Executive Independent Board Members, they are encouraged to appoint persons who do not serve in that capacity for any other Measured Entity.

5. Calculating the Adjusted Recognition for Gender

The Adjusted Recognition for Gender is calculated in terms of formula "A" in Annexe 200(A).

6. Calculating Compliance

6.1 The Management Control indicators provided for in the Management Control Scorecard must be calculated in terms of formulas "B" and "C" in Annexe 200(A).

6.2 If a Measured Entity gains a score for a Management Control indicator that is more than the relevant weighting points, that Enterprise will only receive the Weighting points.

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

STATEMENT 300: THE GENERAL PRINCIPLES FOR MEASURING EMPLOYMENT EQUITY

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

Arrangement of this statement

1. Objectives of this statement
2. Employment Equity scorecard
3. Key measurement principles
4. Calculating the Adjusted Recognition for Gender
5. Measurement of the employment equity criteria

1. Objectives of this statement

The objectives of this statement are to:

1.1 Specify the scorecard for measuring Employment Equity contributions to B-BBEE;

1.2 Define the key measurement principles for measuring the Employment Equity contributions to B-BBEE; and

1.3 Define the formula for calculating the score for Employment Equity.

2. Employment Equity Scorecard

2.1 The following table represents the criteria used for deriving a score for Employment Equity under this statement:

Measurement Category & Criteria		Weighting points	Years 6 -10
2.1.1	Black Disabled Employees as a percentage of all employees using the Adjusted Recognition for Gender	1	3%
2.1.2	Black employees in Senior Management as a percentage of all such employees using the Adjusted Recognition for Gender	4	60%
2.1.3	Black employees in Middle Management as a percentage of all such employees using the Adjusted Recognition for Gender	3	75%
2.1.4	Black employees in Junior Management as a percentage of all such employees using the Adjusted Recognition for Gender	2	80%
2.1.5	Bonus point for meeting or exceeding the EAP targets in each category under 2.1.1 to 2.1.4	3	

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2.2 The Weighting points in the Employment Equity scorecard represent the maximum number of points possible for each of the criteria.

3. Key Measurement Principles

3.1 Wherever possible, a Measured Entity must use the data that it files with the Department of Labour under the Employment Equity Act in calculating its score under the employment equity scorecard.

3.1.1 No Measured Entity shall receive any points under the Employment Equity Scorecard unless they have achieved a sub-minimum of 40% of each of the targets set out on the Employment Equity Scorecard in respect of the both five year periods.

3.2 In order for a Measured Entity to achieve bonus points at a particular level, the entity needs to meet or exceed the EAP targets.

3.3 A Measured Entity exempt from filing returns must compile its data for calculating its score under the Employment Equity Scorecard using the guidelines set out in the Employment Equity Act and its EE Regulations.

3.4 If the organisational structure of a Measured Entity does not distinguish between Middle Management and Junior Management, it can consolidate those Measurement Categories against the targets for Junior Management. The weighting points for the Measurement Categories must be adjusted as follows:

3.4.1 Senior Management - 6 points;

3.4.2 Junior Management - 3 points.

3.5 Black women employees in each Measurement Category qualify for enhanced recognition using the Adjusted Recognition for Gender.

4. Calculating the Adjusted Recognition for Gender

The Adjusted Recognition for Gender is calculated in terms of the formula set out in Annex (300A).

5. Measurement of the Employment Equity Criteria

The criteria in the Employment Equity scorecard is measured in terms of the formula set out in Annex 300(A).

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

STATEMENT 400: THE GENERAL PRINCIPLES FOR MEASURING SKILLS DEVELOPMENT

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

Arrangement of this statement

1. Objectives of this statement
2. The Skills Development Scorecard
3. Key measurement principles
4. Calculating the Adjusted Recognition for Gender
5. Measurement of skills development indicators
6. The Learning Programme Matrix

1. Objectives of this Statement

The objectives of this statement are to specify:

1.1 The scorecard for measuring the Skills Development Element of B-BBEE;

1.2 Define the key measurement principles associated with the Skills Development Element; and

1.3 The formula for measuring the Skills Development Element of B-BBEE.

2. The Skills Development Scorecard

2.1 The following table represents the criteria used for deriving a score for Skills Development under this statement:

Category	Skills Development Element		Weighting points	Compliance Target
2.1.1	Skills Development Expenditure on any program specified in the Learning Programmes Matrix:			
	2.1.1.1	Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for black employees as a percentage of Leviable Amount using the Adjusted Recognition for Gender	7	3%
	2.1.1.2	Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for black employees with disabilities as a percentage of Leviable Amount using the Adjusted Recognition for Gender	3	0.3%
2.1.2	Learnerships			
	2.1.2.1	Number of black employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees	7	5%

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		using the Adjusted Recognition for Gender		

2.2 The Weighting points in the Skills Development scorecard represent the maximum number of points possible for each of the criteria.

3. Key Measurement Principles

3.1 Measured Entities receive points on the Skills Development scorecard only if:

3.1.1 They are in compliance with the requirements of the Skills Development Act and the Skills Development Levies Act;

3.1.2 They have registered with the applicable SETA;

3.1.3 They have developed a Workplace Skills Plan; and

3.1.4 They have implemented programmes targeted at developing Priority Skills generally, and specifically, for black employees.

3.2 Expenses on scholarships and bursaries for employees does not constitute Skills Development Expenditure if the Measured Entity can recover any portion of those expenses from the employee or if the grant of the scholarship or bursary is conditional. Despite the afore going, if the right of recovery or the condition involves either of the following obligations of the employee, the expenses are recognisable:

3.2.1 The obligation of successful completion in their studies within the time period allocated; or

3.2.2 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.

3.3 Any Skills Development Expenditure by a Measured Entity that is an ABET programme is recognisable at a multiple of 1.25 to the actual value of such Skills Development Expenditure.

3.4 Skills Development Expenditure 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.

3.5 Skills Development Expenditure arising from Uncertified Learning Programmes or from Category G Learning Programmes under the Learning Programmes Matrix cannot represent more than 15% of the total value of Skills Development Expenditure.

3.6 Legitimate training expenses includes:

3.6.1 Costs of training materials;

3.6.2 Costs of trainers;

3.6.3 Costs of training facilities including costs of catering;

3.6.4 Scholarships and bursaries;

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3.6.5 Course fees;

3.6.6 Accommodation and travel; and

3.6.7 Administration costs such as the organization of training including, where appropriate, the cost to the Measured Entity of employing a skills development facilitator or a training manager.

3.7 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 or falls within Category B; C; or D of the Learning Programme Matrix.

4. Calculating the Adjusted Recognition for Gender

The calculation of the Adjusted Recognition for Gender is set out in formula "A" in Annexe 400(B).

5. Measurement of Skills Development Indicators

The formula that explains the method of measurement of the criteria in the Skills Development scorecard is in terms of formula "B" in Annexe 400(B).

6. The Learning Programme Matrix

The Minister of Trade and Industry may from time to time, by notice in the gazette, revise or substitute the Learning Programme Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity for the first 12-month period following the gazetting of a revision or substitution.

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

STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING PREFERENTIAL PROCUREMENT

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

Arrangement of this statement

1. Objectives of this statement
2. Preferential Procurement Scorecard
3. Key Measurement Principles
4. Black Owned Professional Services Providers and Entrepreneurs
5. Total Measured Procurement Spend
6. Exclusions from Total Measured Procurement Spend
7. Measurement of B-BBEE Procurement Spend
8. The calculation of Preferential Procurement contributions to B-BBEE

1. Objectives of this Statement

The objectives of this statement are to specify:

1.1 The Preferential Procurement scorecard;

1.2 The key measurement principles applicable to calculating Preferential Procurement contributions to B-BBEE;

1.3 A basis for the award of an enhanced recognition status to certain categories of Preferential Procurement;

1.4 Principles applicable when calculating B-BBEE Procurement Spend; and

1.5 The formula for calculating the individual criteria specified in the Preferential Procurement scorecard.

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2. Preferential Procurement Scorecard

2.1 The following table represents the criteria for deriving a score for Preferential Procurement under this statement:

Criteria			Weighting points	Compliance targets
2.1.1	B-BBEE Procurement Spend from all Suppliers based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend		12	70%
2.1.2	B-BBEE Procurement Spend from Qualifying Small Enterprises or Exempted Micro-Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend		3	15%
2.1.3	B-BBEE Procurement Spend from any of the following Suppliers as a percentage of Total Measured Procurement Spend:		5	20%
	2.1.3.1	Suppliers that are 50% black owned (3 out of 5 points); or		
	2.1.3.2	Suppliers that are 30% black women owned. (2 out of 5 points)		
2.1.4	Publish and implement favourable payment terms for black-owned, black-empowered and black engendered SMMEs of less than or equal to 15 days		3 (bonus)	
2.1.5	Bonus points allocated up to a maximum of 2 points for B-BBEE spend from enterprises referred to in 2.1.3 above that include people with disabilities who have minimum of 5% equity participation		2 (bonus)	
2.1.6	A bonus point shall be awarded for every 5% of the 70% target spent with entities referred to in 2.1.3 above		1 (bonus)	

3. Key Measurement Principles

3.1 The Weighting points in the Preferential Procurement scorecard represent the maximum number of points possible for each of the criteria.

3.2 All goods and services procured by the Measured Entity, other than any portion specifically excluded in terms of this statement, is measurable in calculating its Total Measured Procurement Spend.

3.3 If a Measured Entity procures goods and services from a Supplier that is:

3.3.1 a recipient of enterprise development contributions from the Measured Entity under Code series 600, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.2; and

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3.3.2 a Value-Adding Supplier, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.25.

3.4 This statement applies to all areas of procurement.

4. Black Owned Professional Service Providers and Entrepreneurs

4.1 A key intention of this statement is to promote the use by Measured Entities, of black owned professional service providers and entrepreneurs as suppliers.

4.2 Black owned professional service providers and entrepreneurs that comply with all the elements of the ICT Codes:

4.2.1 qualify for recognition in all three criteria in the preferential procurement scorecard; and

4.2.2 qualify as value-adding suppliers thereby attracting the benefits in paragraph 3.3.2.

5. Total Measured Procurement Spend

The following procurement is measurable within Total Measured Procurement Spend:

5.1 Cost of sales: all goods and services procured that comprise the cost of the sales of the Measured Entity,

5.2 Operational expenditure: all goods and services procured that comprise the operational expenditure of the Measured Entity;

5.3 Capital expenditure: all capital expenditure incurred by the Measured Entity;

5.4 Public sector procurement: all goods and services procured from organs of state and public entities listed in Schedules 2 and 3 to the Public Finance Management Act of 1998:

5.5 Monopolistic procurement: all goods and services procured from suppliers that enjoy a monopolistic position;

5.6 Third-party procurement: all procurement for a third-party or a client, where the cost of that procurement is an expense recorded in the Measured Entity's annual financial statements;

5.7 Labour brokers and independent contractors: any procurement of the Measured Entity which is Outsourced Labour Expenditure;

5.8 Pension and medical aid contributions: payments made to any post retirement funding scheme or to a medical aid or similar medical insurer by a Measured Entity for its employees, excluding any portions of such payments which are a contribution to a capital investment of the employee. The scheme or insurer must issue a certificate dividing payments between the capital investment portion and the balance to establish the amount that is measurable within Total Measured Procurement Spend;

5.9 Trade commissions: any commissions or similar payments payable by a Measured Entity to any other person pursuant to the business or trade of the Measured Entity;

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5.10 Empowerment related expenditure: all goods and services procured in carrying out B-BBEE. The Total Measured Procurement Spend does not include the actual contribution portion recognised under Code series 600 or 700 but does include any expenditure incurred in facilitating those contributions:

5.11 Imports: all goods and services that are imported or procured from a non-South African source; and

5.12 Intra-group procurement: except as provided in statement 002, all goods and services procured from subsidiaries or holding companies of the Measured Entity.

6. Exclusions from Total Measured Procurement Spend

The following list is the only permissible exclusions from Total Measured Procurement Spend recognisable in terms of paragraph 5:

6.1 Taxation: any amount payable to any person which represents a lawful tax or levy imposed by an organ of state authorised to impose such tax or levy, including rates imposed by a municipality or other local government;

6.2 Public sector procurement:

6.2.1 all goods and services procured from organs of state and public entities listed in Schedule 1 of the Public Finance Management Act of 1999. Despite this, procurement by a Measured Entity from a local government authority, which is a reseller of that service, is measurable at the B-BBEE Recognition Level of the primary Supplier of the service; and

6.2.2 in any event, any procurement of any goods or services from any organ of state or public entity that enjoys a statutory or regulated monopoly in the supply of such goods or services, is excluded;

6.3 Salaries, wages, remunerations, and emoluments: any amount payable to an employee as an element of their salary or wage and any emolument or similar payment paid to a director of a Measured Entity

6.4 Pass-through third-party procurement: all procurement for a third- party or a client that is recorded as an expense in the third-party or client's annual financial statements but is not recorded as such in the Measured Entity's annual financial statements;

6.5 Empowerment related procurement:

6.5.1 investments in or loans to an Associated Enterprise;

6.5.2 investments, loans or donations qualifying for recognition under any statement under Code series 600 or 700;

6.6 Imports: the following imported goods and services:

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

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

6.6.1.2 importing those capital goods or components promotes further value-added production within South Africa;

6.6.2 imported goods and services other than those listed in paragraph 6.6.1 if there is no local production of those goods or services including, but not limited to, imported goods or services that -

6.6.2.1 carry a brand different to the locally produced goods or services; or

6.6.2.2 have different technical specifications to the locally produced goods or services.

7. Measurement of B-BBEE Procurement Spend

7.1 B-BBEE Procurement Spend is the value of the procurement falling within paragraph 5 and not excluded by paragraph 6. If a supplier falls within a category of supplier listed in paragraph 3.3 or 4, the value of procurement from that supplier is multiplied by the applicable factor listed in paragraph 3.3.

7.2 B-BBEE Procurement Spend can be measured in terms of formula "A" in Annexe 500(A).

7.3 The B-BBEE Procurement Spend for a Measured Entity in respect of a supplier is calculated by multiplying the spend contemplated by paragraph 5 (and not excluded by paragraph 6) in respect of that supplier by the supplier's B-BBEE Recognition Level.

7.4 A Measured Entity's Total Procurement Spend is the total of all amounts calculated in terms of paragraph 7.3.

8. The Calculation of Preferential Procurement Contributions to B-BBEE

8.1 A Measured Entity receives a score for procurement in proportion to the extent that it meets the compliance target

8.2 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 500(A).

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

STATEMENT 600: THE GENERAL PRINCIPLES FOR MEASURING ENTERPRISE DEVELOPMENT ELEMENT

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

Arrangement of this statement

1. Objectives of this statement
2. The Enterprise Development scorecard
3. Key Measurement Principles
4. Measurement of Qualifying Contributions
5. The Benefit Factor Matrix

1. Objectives of this statement

The objectives of this statement are to specify:

1.1 The Enterprise Development (ED) scorecard;

1.2 The key measurement principles for calculating Qualifying Enterprise Development Contributions; and

1.3 The formula for calculating the individual criteria specified in the ED scorecard.

2. The Enterprise Development Scorecard

2.1 The following table represents the criteria and method used for deriving a score for Enterprise Development under this statement:

Criteria	Weighting Points	Compliance Target
Average annual value of all Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.	11	5% NPAT

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

2.4 The ICT sector has set the target of 5% Net Profit After Tax (NPAT) for Enterprise Development to accelerate transformation in the sector by developing black owned ICT companies. The Enterprise Development spend shall include financial and non-financial spend on enterprises including transfer of business skills to black owned ICT businesses in order to grow the sector.

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3. Key Measurement Principles

The ICT Sector recognises that key to BEE in the sector is the establishment of a viable entrepreneurial base, and therefore commit to the following

3.1 General principles:

3.1.1 Measured Entities receive recognition for any Qualifying Enterprise Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

3.1.2 Qualifying Enterprise Development Contributions of any Measured Entity are recognisable cumulatively:

3.1.2.1 From the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date), until the date of measurement

3.1.2.2 The inception date chosen by the Measured Entity must not be earlier than 5 years before the commencement date of this statement, and binds the Measured Entity for the duration of this statement

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

3.2 Recognition of Enterprise Development Contributions:

3.2.1 Enterprise Development Contributions consist of monetary or non-monetary, recoverable or non-recoverable contributions actually initiated and implemented in favour of beneficiary entities by a Measured Entity with the specific objective of assisting or accelerating the development sustainability and ultimate financial and operational independence of that beneficiary. This is commonly accomplished through the expansion of those beneficiaries' financial and/or operational capacity.

3.2.2 The full value of Category A Enterprise Development Contributions, adjusted using the Benefit Factor, multiplied by 1,25 is recognisable.

3.2.3 The full value of Category B Enterprise Development Contributions is recognisable.

3.2.4 Recognition of Enterprise Development Contribution is limited to Qualifying Enterprise Development Contributions made to beneficiary entities. However, historical contributions to non-qualifying beneficiaries are considered as Qualifying Enterprise Development Contributions if:

3.2.4.1 Those contributions were initiated by the Measured Entity in favour of the beneficiary on the understanding that the beneficiary, as a result of those Enterprise Development Contributions, would over time meet the requirements of a beneficiary entity. For the purposes of this paragraph -

3.2.4.1.1 contributions commenced before the commencement date of the ICT Codes, must be shown to have involved agreement between the Measured Entity and the beneficiary that the support received be used, at least in part,

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for the purposes of improving the beneficiary's overall BEE compliance level; and

3.2.4.1.2 contributions commenced after the commencement date of the ICT Codes, must be in terms of a written agreement between the Measured Entity and the beneficiary recording that support received be used, at least in part, for the purposes of meeting the definitional requirements of a beneficiary entity; and

3.2.4.2 the beneficiary has met the definitional requirements of a beneficiary entity.

3.2.5 The following is a non-exhaustive list of Enterprise Development Contributions:

3.2.5.1 Grant Contributions to beneficiary entities;

3.2.5.2 Investments in beneficiary entities;

3.2.5.3 Loans made to beneficiary entities:

3.2.5.4 Guarantees given or security provided on behalf of beneficiaries;

3.2.5.5 Credit facilities made available to beneficiary entities;

3.2.5.6 Direct costs incurred by a Measured Entity in assisting and hastening development of beneficiary entities;

3.2.5.7 Overhead costs of a Measured Entity directly attributable to Enterprise Development Contributions;

3.2.5.8 Enterprise Development or developmental capital advanced to beneficiary entities;

3.2.5.9 Preferential credit terms granted by a Measured Entity to beneficiary entities;

3.2.5.10 preferential terms granted by a Measured Entity in respect of its supply of goods or services to beneficiary entities;

3.2.5.11 contributions made to settling service costs relating to the operational or financial capacity or efficiency levels of beneficiary entities:

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

3.2.5.13 discounts given to beneficiary entities in relation to the acquisition and maintenance costs associated with the grant to those beneficiary entities of franchise, licence, agency, distribution or other similar business rights;

3.2.5.14 the creation or development of capacity and expertise for beneficiary entities needed to manufacture or produce goods or services previously not manufactured, produced or provided in the Republic of South Africa;

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3.2.5.15 facilitating access to credit for beneficiary entities without access to similar credit facilities through traditional means owing to a lack of credit history, high-risk or lack of collateral;

3.2.5.16 provision of training or mentoring to beneficiary entities which will assist the beneficiary entities to increase their operational or financial capacity and

3.2.5.17 the maintenance by the Measured Entity of an enterprise development unit which focuses exclusively on support of beneficiary entities or candidate beneficiary entities.

3.2.6 Enterprise Development Contributions consist of support and fostering of new and existing black-owned, black-empowered and black-engendered SMME's through the following initiatives:

3.2.1.1 Using incubation with the assistance of institutions of higher learning in order to develop sustainable enterprises in the sector;

3.2.1.2 Introducing formal and informal entrepreneurship programmes particularly using available resources in order to support education campaigns;

3.2.1.3 Providing skills development, training and mentoring in order to develop management skills through partnerships and skills transfer.

3.2.7 The creation or development of the capacity of beneficiary entities which will enable them to manufacture and produce goods or provide services previously not available in the Republic of South Africa, may constitute an Enterprise Development Contribution.

3.2.8 New projects promoting beneficiation may constitute an Enterprise Development Contribution.

3.2.8 Provision of preferential credit facilities to a beneficiary entity by a Measured Entity may constitute an Enterprise Development Contribution. Examples of such contributions include without limitation:

3.2.8.1 provision of finance to beneficiary entities at lower than commercial rates of interest;

3.2.8.2 relaxed security requirements or absence of security requirements for beneficiary entities unable to provide security for loans; and

3.2.8.3 settlement of accounts with beneficiary entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided the shorter period is no longer than 10 days;

3.2.9 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 initiatives. A clear justification, commensurate with the seniority

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and expertise of the trainer or mentor, must support any claim for time costs incurred).

3.2.9.1 Maintaining an enterprise development 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 or implementing enterprise development constitute contributions.)

3.2.9.2 Payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf.

4. Measurement of Qualifying Contributions

Qualifying Contributions are measurable using the formula "A" in Annexe 600(B)

5. The Benefit Factor Matrix

The Minister of Trade and Industry may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.

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CODE SERIES 700: MEASUREMENT OF THE SOCIOECONOMIC DEVELOPMENT ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 700: THE GENERAL PRINCIPLES FOR MEASURING THE SOCIO-ECONOMIC DEVELOPMENT ELEMENT

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

Arrangement of this statement

1. Objectives of this statement
2. The SED scorecard
3. Key Measurement Principles
4. Measurement of Socio-Economic Development Contributions
5. The Benefit Factor Matrix

1. Objectives of this Statement

The objectives of this statement are to specify:

1.1 the Socio-Economic Development (SED) and Sector Specific Contributions scorecard;

1.2 the key measurement principles applicable when calculating Socio-Economic Development Contributions; and

1.3 the formula for calculating the individual criteria specified in the SED scorecard.

2. The SED Scorecard

2.1. The NPAT or average target applies unless:

2.1.1 the company does not make a profit last year or on average over the last five years

2.1.2 the net profit margin is less than a quarter of the norm in the industry.

2.2 If the Turnover is to be used, the target will be set at:

2.2.1 1.5 % x Indicative Profit Margin (NPAT/Turnover) x Turnover

2.2.2 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.

2.3 The following table represents the criteria and method used for deriving a score for Socio-Economic Development under this statement:

Criteria	Weighting Points	Compliance Target
Average annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target	12	1.5% of NPAT

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

2.5 The ICT sector recognizes that bridging the digital divide requires enterprises to undertake certain obligations in terms of access to ICT's so as to improve the lives of the people. Such programmes could be in the form of providing ICT's in education, health and programmes aimed at enhancing the lives of black communities or people. Consideration will also be to enterprises operating within the regulated sub-sector, to the existing license obligations placed on these enterprises.

3. Key Measurement Principles

3.1 General principles:

3.1.1 Measured Entities receive recognition for any Socio-Economic Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.

3.1.2 Socio-Economic Development Contributions of any Measured Entity are recognisable cumulatively;

3.1.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date), until the date of measurement

3.1.2.2 The inception date chosen by the Measured Entity must not be earlier than 5 years before the commencement date of this statement, but binds the Measured Entity for the duration of this statement

3.1.2.3 No portion of the value of any Socio-Economic Development contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement

3.2 Socio- Economic Development Contributions:

3.2.1 Socio-Economic Development 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 sustainable access to the economy for those beneficiaries.

3.2.2 The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people.

3.2.3 If less than 75% of the full value of Socio-Economic Development Contributions directly benefits black people, the value of the contribution made multiplied by the percentage that benefits black people, is recognisable.

3.2.4 The following is a non-exhaustive list of Socio-Economic Development Contributions:

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3.2.4.1 grant Contributions to beneficiaries of Socio-Economic Development Contributions:

3.2.4.2 guarantees given or security provided for beneficiaries:

3.2.4.3 direct costs incurred by a Measured Entity in assisting beneficiaries;

3.2.4.4 overhead costs of a Measured Entity directly attributable to Socio-Economic Development Contributions;

3.2.4.5 developmental capital advanced to beneficiary communities;

3.2.4.6 preferential terms granted by a Measured Entity for its supply of goods or services to beneficiary communities;

3.2.4.7 payments made by the Measured Entity to third parties to perform socio-economic development on the Measured Entity's behalf;

3.2.4.8 subject to paragraph 3.2.5.1, provision of training or mentoring to beneficiary communities which will assist them to increase their financial capacity; and

3.2.4.9 subject to paragraph 3.2.5.2, the maintenance by the Measured Entity of a socioeconomic development unit which focuses only on support of beneficiaries and beneficiary communities.

3.2.5. 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 initiatives. A clear justification must support any claim for time costs incurred, commensurate with the seniority and expertise of the trainer or mentor).

3.2.6 Maintaining a socio-economic development 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 socio-economic development constitute contributions.)

3.2.7 Payments made by the Measured Entity to third parties to perform socio-economic development on the Measured Entity's behalf.

3.2.8 A measured entity who as a result of sector legislation is subject to obligations aimed at enhancing the socio-economic development of black people, and/or annual payments to a body tasked with socio economic development may count that contribution as part of its compliance with the target.

4. Measurement of Socio-Economic Development Contributions

Socio-Economic Development Contributions are measurable using the formula in Annexe 700 (B).

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5. The Benefit Factor Matrix

The Minister of Trade and Industry may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.

CODE SERIES 800: ICT CODES OF GOOD PRACTICE FOR QUALIFYING SMALL ENTERPRISES (QSE'S)

ISSUED UNDER SECTION 9 OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT OF 2003

Arrangement of this statement

1. Statement 800: The Framework for QSEs
2. Statement 801: Ownership for QSEs
3. Statement 802: Management Control for QSEs
4. Statement 803: Employment Equity for QSEs
5. Statement 804: Skills Development for QSE's
6. Statement 805: Preferential Procurement for QSEs
7. Statement 806: Enterprise Development for QSEs
8. Statement 807: Socio-economic Development Contributions for QSE's

1. Statement 800: the framework for the QSE scorecard and exempted Micro-enterprises

1.1 Objectives of this statement

1.1.1 The objectives of this statement are to:

1.1.1.1 specify the Elements of B-BBEE measurable under the Qualifying Small Enterprise (QSE) Scorecard;

1.1.1.2 specify the QSE Scorecard;

1.1.1.3 specify the principles in the Statements (100 - 700) applicable to Qualifying Small Enterprises.

1.2 Eligibility as a QSE

2.1.1 Any enterprise with an annual Total Revenue of between R5million and R35million qualifies as a QSE, if its qualification does not result from circumvention of the ICT Codes.

1.3 The QSE Scorecard

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The following table represents the QSE Scorecard and contains the Elements of the scorecard and the Weightings for each element:

Element	**Weighting**	**Code Series 800**
Framework		800
Ownership	25 points	801
Management control	25 points	802
Employment equity	25 points	803
Skills development	25 points	804
Preferential procurement	25 points	805
Enterprise Development	25 points	806
Socio Economic Development Contributions	25 points	807

1.3.2 A QSE must select any four of the seven Elements of B-BBEE for the purposes of measurement under the QSE Scorecard. If a QSE does not make a selection, its four best element scores will be used for the purposes of measurement.

1.3.3 A QSE will be scored in proportion to the extent that it meets the compliance targets for those four elements.

1.3.4 The Weighting points in respect of any element in the scorecard represent the maximum number of points possible for each of the criteria.

1.3.5 Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, in all other applicable calculations in this statement.

1.3.6 The Adjusted Recognition for Gender must be used for the purposes of calculating the Employment Equity, Skills Development and Management Control element of the QSE scorecard.

1.3.7 The B-BBEE compliance of a QSE must be determined in accordance with code 000.

1.3.8 Any matter concerning the application of the QSE scorecard that is not dealt with explicitly in this scorecard must be dealt with in terms of ICT Codes 100-700.

1.4 Transitional period

1.4.1 The ICT Sector Code shall come into effect from the date of gazette. Entities in the ICT Sector shall apply the ICT Sector Code for measurement of their B-BBEE status.

2. Statement 801: Ownership for QSEs

2.1 The QSE ownership scorecard

The following table represents the indicators and method for calculating a score for ownership under this statement:

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Category	Ownership indicator		Weighting points	Compliance Target
2.1.1	Voting rights:			
	2.1.1.1	Exercisable Voting Rights in the Enterprise in the hands of black people	6	30%
2.1.2	Economic Interest:			
	2.1.2.1	Economic Interest of black people in the Enterprise	9	30%
2.1.3	Realisation points:			
	2.1.3.1	Ownership fulfilment	1	
	2.1.3.2	Net Value	9	
2.1.4	Bonus points:			
	2.1.4.1	Involvement in the ownership of the Enterprise by black women	2	10%
	2.1.4.2	Involvement in the ownership of the Enterprise by black Participants in Employee Ownership Schemes, Cooperatives or Broad-Based Ownership Schemes	1	10%

2.2 Key measurement principles

2.2.1 General principles:

2.2.1.1 An Enterprise receives points for participation by black people in its rights of ownership, using the QSE ownership scorecard. Black people may hold their rights of ownership in a Measured Enterprise as direct Participants or as Participants through a business such as:

- a company with shares;
- a close corporation;
- a co-operative;
- any form of juristic person recognised under South African law;
- a partnership or other association of natural persons;
- an Employee Share Ownership Scheme;
- a Broad-Based Ownership Scheme; and
- a trust.

2.3 Realisation Points

2.3.1 Ownership Fulfilment occurs:

2.3.1.1 on the release of all black Participants in a Measured Enterprise from all third-party rights; or

2.3.1.2 if black Participants have never been subject to any third- party rights.

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2.3.1.3 A minimum score of 7 points for Net Value is a requirement for the award of the Ownership Fulfilment point.

2.4 The bonus points

2.4.1 A Measured Enterprise with 30% black Economic Interest, can receive a maximum of 2 bonus points for a 10% holding of Economic Interest by black women.

2.4.2 A Measured Enterprise with 30% black Economic Interest, can receive a maximum of 1 bonus point for a 10% holding of Economic Interest by black Participants in:

2.4.1.1 Employee Share Ownership Schemes;

2.4.1.2 Co-operatives; or

2.4.1.3 Broad-Based Ownership Schemes.

2.4.3 A Qualifying Small Enterprise may benefit from any of the other statements in the Code series 100. When electing to benefit from any of those statements, the provisions of those statements apply to the Qualifying Small Enterprise.

2.4.4 The Qualifying Small Enterprise Ownership Scorecard remains applicable to Qualifying Small Enterprise's even if they benefit from other statements in the Code series 100.

2.4.5 Any interpretation or calculation of a QSE's score for ownership must be made in accordance with statement 100.

2.4.6 Without limiting the generality of the preceding clause, the following matters dealt with in code 100 apply expressly to QSEs -

2.4.6.1 The Flow-Through Principle

- Specific rules on certain types of enterprises (Broad-Based Ownership Schemes; Employee Share Ownership Schemes and Trusts).

3. Statement 802: Management control for QSEs

3.1 THE QSE Management control scorecard

The following table represents the indicators and method for calculating a score for management control under this statement:

Management control criteria	Weighting points	Compliance Target
Black representation at Top-Management level.	25	50.1%
Bonus Points: Black women representation as Top-Management	2	25%

3.2 Key measurement principles

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3.2.1 A Measured Entity receives points in proportion to the extent that it meets the targets for participation of black people and black women at Top-Management level.

3.3 Common examples of Top Management

The inclusion of the following examples of Top Management is for guidance purposes only:

3.3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, the chief financial officer and other people holding similar positions.

3.3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, the head of human resources and other people holding similar positions.

4. Statement 803: Employment equity for QSE's

4.1 The QSE Employment Equity scorecards

The following table represents the criteria used for deriving a score for employment equity under this statement:

Criteria	**Weighting points**	Years 6 -10
Black employees of the Measured Entity who are Management as a percentage of all Management adjusted using the Adjusted Recognition for Gender	15	60%
Black employees of the Measured Entity as a percentage of all employees adjusted using the Adjusted Recognition for Gender	10	70%
Bonus point for meeting or exceeding the EAP targets in each category above	2	

4.2 Key measurement principles

4.2.1 A Measured Entity receives points in proportion to the extent that it meets the targets for participation of black people and black women at Management level.

4.2.2 Wherever possible, a Measured Entity must use the data that it files with the Department of Labour under the Employment Equity Act in calculating its score under the employment equity scorecard.

4.2.3 No Measured Entity shall receive any points under the Employment Equity Scorecard unless they have achieved a sub-minimum of 40% of each of the targets set out on the Employment Equity Scorecard in respect of the both five year periods.

4.2.4 In order for a measured entity to achieve bonus points at a particular level, the entity needs to meet or exceed the EAP targets.

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4.2.5 A Measured Entity exempt from filing returns must compile its data for calculating its score under the Employment Equity Scorecard using the guidelines set out in the Employment Equity Act and its EE Regulations.

4.2.6 Black women employees in each Measurement Category qualify for enhanced recognition using the Adjusted Recognition for Gender.

4.3 Calculating the Adjusted Recognition for Gender

The calculation of the Adjusted Recognition for Gender is as follows:

C is limited to a maximum of 50% of the target

$$A = \frac{B}{2} + C$$

Where

A is the Adjusted Recognition for Gender

B is the percentage of employees in the measurement category that are black people

C is the percentage of employees in the measurement category that are black women

5. Statement 804: Skills development for QSE's

5.1 The QSE Skills Development Scorecard

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

Skills Development Element	**Weighting points**	**Compliance Target**
Adjusted skills development spend on learning programmes for black employees as a percentage of leviable amount	25	2%

5.2 Key measurement principles

5.2.1 Any Skills Development Spend by a Measured Entity that is an ABET programme is recognisable at a multiple of 1.25 to the actual value of such Skills Development Spend.

5.2.2 Skills Development Spend 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.

5.2.3 Legitimate training expenses include:

5.2.3.1 costs of training materials;

5.2.3.2 costs of trainers including, where appropriate, the opportunity cost of internal trainers;

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5.2.3.3 costs of training facilities including costs of catering;

5.2.3.4 scholarships and bursaries;

5.2.3.5 course fees;

5.2.3.6 accommodation and travel; and

5.2.3.7 administration costs such as organization of training including, where appropriate, the cost to the Measured Entity of employing a skills development facilitator or a training manager.

5.2.4 No portion of any salary or wage paid to any employee participating as a learner in any Learning Programme constitutes Skills Development Spend unless the Learning Programme is an In-service Training Programme.

6. Statement 805: Preferential procurement for QSE's

6.1 The QSE Preferential Procurement Scorecard

The following table represents the criteria for deriving a score for preferential procurement under this statement:

Criteria	Weighting points	Compliance targets
BEE Procurement Spend from all Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	25	50%

6.2 Key Measurement Principles

6.2.1 All procurement of goods and services by the Measured Entity, other than such portion specifically excluded in this statement, is measurable in calculating Total Measured Procurement Spend of the Measured Entity.

6.2.2 Where a Measured Entity can show that it procures goods and services from a Supplier that is also:

6.2.2.1 a recipient of enterprise development contributions from the Measured Entity under Code series 600, the BEE Procurement Spend attributable to that Supplier multiplied by a factor of 1.2 is recognisable; and

6.2.2.2 a Value-Adding Supplier, the BEE Procurement Spend attributable to that Supplier multiplied by a factor of 1.25 is recognisable.

6.2.3 Measured Entities are expected to pursue compliance with this statement in respect of all areas of procurement

6.2.4 Total Measured Procurement Spend of a Measured Entity and the Exclusions from Total Measured Procurement Spend must be determined in accordance with Statement 500.

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7. Statement 806: Enterprise development for QSE's

7.1 The QSE Enterprise Development (ED) scorecards

7.1.1 In calculating the compliance of a Measured Entity the following Net Profit After Tax (NPAT) target applies unless:

7.1.1.1 the company does not make a profit last year or on average over the last five years.

7.1.1.2 the net profit margin is less than a quarter of the norm in the industry.

7.1.1.3 If the Turnover is to be used, the target will be set at:

- 2% x Indicative Profit Margin (NPAT/Turnover) x 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.

7.1.2 The following table represents the criteria and method used for deriving a score for approved projects and enterprise development under this statement:

Criteria	Weighting Points	Compliance Target
Average annual value of all Qualifying Contributions made by the Measured Entity as a percentage of the target	25	2% of Net Profit After Tax

7.2 Key Measurement Principles

7.2.1 Measured Entities receive recognition for any Qualifying Contributions that are quantifiable as a monetary value using a Standard valuation method.

7.2.2 Qualifying Contributions of any Measured Entity are recognisable:

7.2.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date);

7.2.2.2 until the date of measurement.

7.2.3 No portion of the value of any Qualifying Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement.

7.2.4 The recognition of Enterprise Development contributions must be determined in accordance with statement 600.

8. Statement 807: Socio-economic Development Contributions for QSE's

8.1 The QSE Socio-economic Development (SED) Scorecard

8.1.1 In calculating the compliance of a Measured Entity the following Net Profit After Tax (NPAT) target applies unless:

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8.1.1.1 the company does not make a profit last year or on average over the last five years.

8.1.1.2 the net profit margin is less than a quarter of the norm in the industry.

8.1.2. If the Turnover is to be used, the target will be set at:

8.1.2.1 1.5 %x Indicative Profit Margin (NPAT/Turnover) x Turnover.

8.1.2 The following table represents the criteria and method used for deriving a score for socio-economic development under this statement:

Criteria	Weighting Points	Compliance Target
Average annual value of all Socio-Economic Development Contributions and Approved Socio-Economic Development Contributions-made by the Measured Entity as a percentage of the target.	25	1.5% of NPAT

8.2 Key Measurement Principles

8.2.1 Measured Entities receive recognition for any Qualifying Contributions that are quantifiable as a monetary value using a Standard Valuation Method

8.2.2 Qualifying Contributions of any. Measured Entity are recognisable;

8.2.2.1 from the commencement date of this statement, or an earlier date chosen by the Measured Entity (the Inception Date);

8.2.2.2 until the date of measurement,

8.2.2.3 No portion of the value of any Qualifying Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement:

8.2.3 Payments made by the Measured Entity to third parties to perform social development on the Measured Entity's behalf may constitute a SED Contribution.

8.2.4 The recognition of SED Contributions must be determined in accordance with code 700.

8.2.5 Sector Specific Contributions:

8.2.6 Sector Specific Contributions are recognised on the basis set forth in the Sector Code governing them.

BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT SECTION 9(1) ICT CODES OF GOOD PRACTICE

SCHEDULE 1

INTERPRETATION AND DEFINITIONS

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The "Information & Communications Technologies Sector" shall without in any way limiting the ordinary meaning of the terms, mean the sector in which employers and employees are associated for the carrying on of any one or more of the following activities:

marketing, manufacturing, assembling, servicing, installing, maintaining and/or repairing systems, software, equipment, machines, devices and apparatus, whether utilising manual, photographic, optical mechanical, electrical, electrostatic or electronic principles or any combination of such principles, that are primarily intended for the recording and/or processing and/or monitoring and/or transmission of voice and /or data and/or image and/or text or any combination thereof for use in any one or more of the following activities:

accounting, calculating, data processing, data transmission, duplicating, text processing, document reproduction, document transmission, record keeping and record retrieval, broadcasting or transmission for entertainment or information purposes of voice and/or image and/or text or any combination thereof and/or; the provision of services relating to the above.

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

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