



REPABOLIKI YA AFERIKA BORWA

REPUBLIC VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Section 9(5): Codes of Good Practice

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

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

STATEMENT 1100: THE RECOGNITION OF OWNERSHIP FOR QUALIFYING SMALL ENTERPRISES

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

Arrangement of this Statement

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1 DEFINITIONS

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

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

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

2 INTERPRETATION OF THIS STATEMENT

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

3 APPLICATION OF THIS STATEMENT

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

4 OBJECTIVES OF THIS STATEMENT

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

5 STATEMENT OF PRINCIPLE

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

6 OWNERSHIP SCORECARD

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

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

7 KEY MEASUREMENT PRINCIPLES

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

7.1.1 the Flow - Through Principle or the Modified Flow-Through Principle; and

7.1.2 the Control Principle.

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

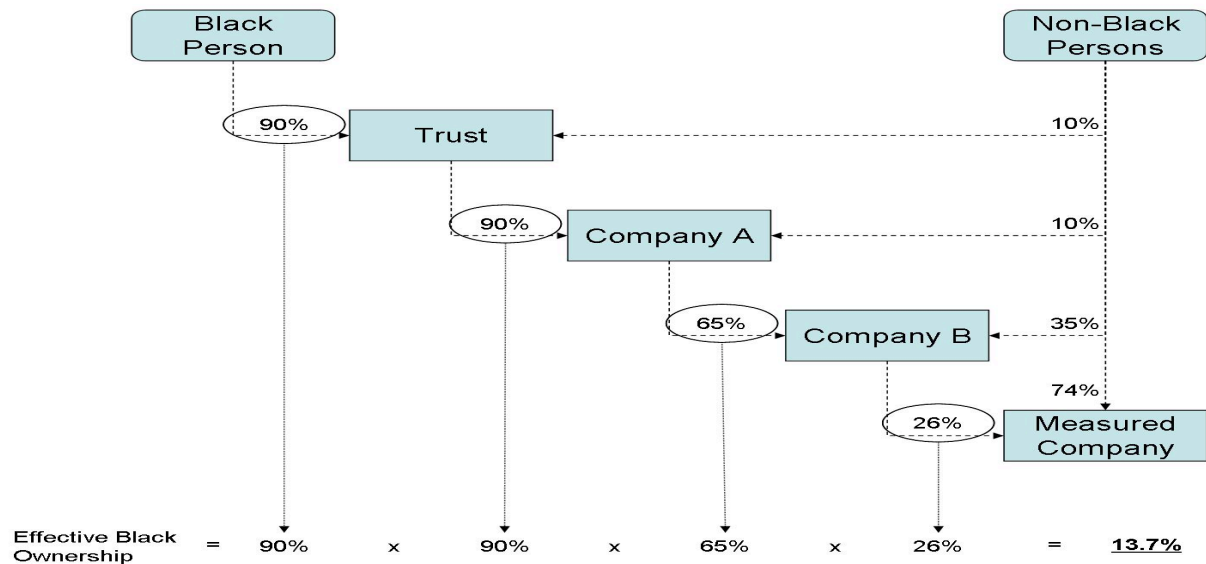


Figure 100-1: Illustration of Flow-Through Principle: The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership".

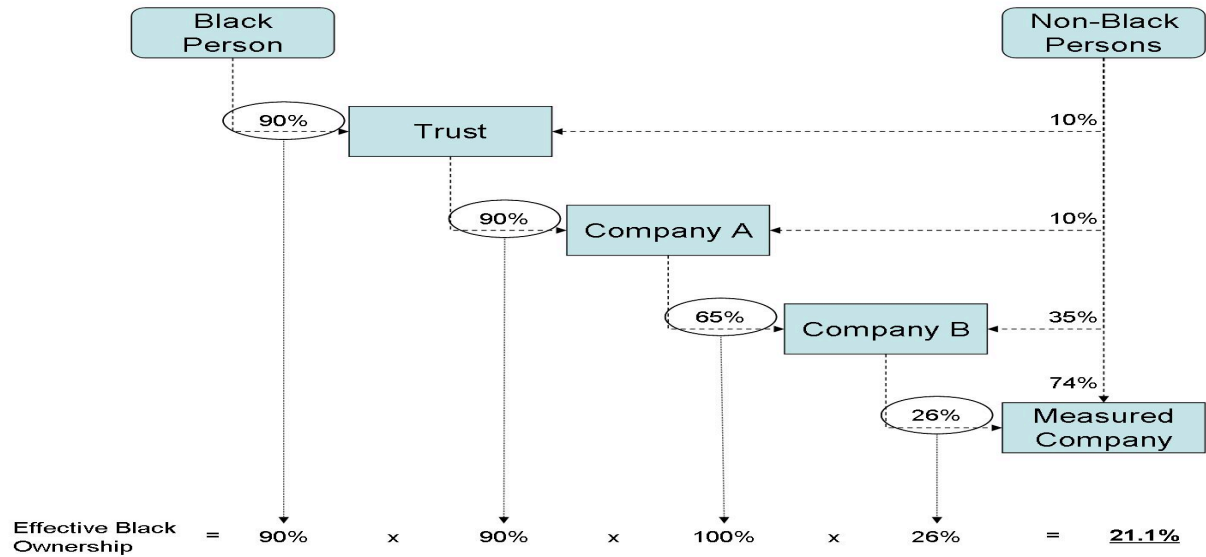


Figure 100-2: Illustration of Modified Flow-Through Principle: The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership", with the exception of the black majority owned companies (Company A and Company B) where one of those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

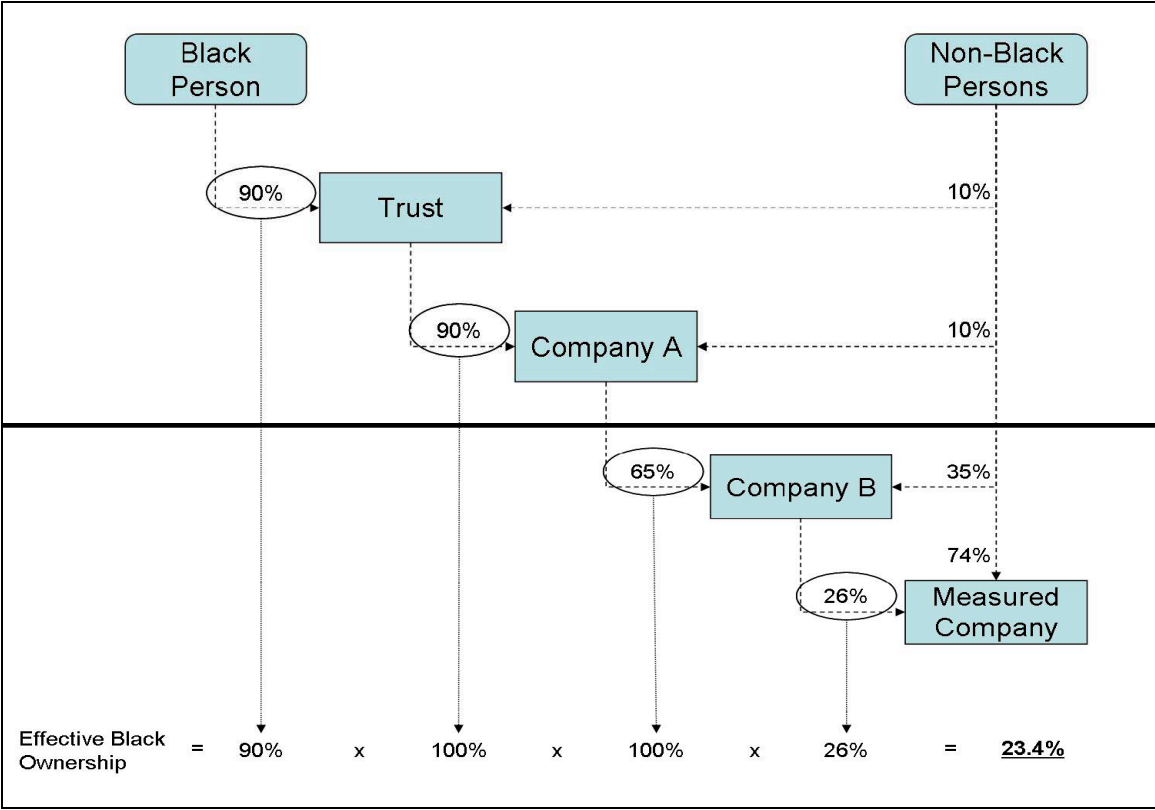


Figure 100-3: Illustration of Control Principle: The actual level of black ownership at each level in the ownership chain is included in the calculation of the "effective black ownership", with the exception of the black majority controlled companies (Company A and Company B) where each of those companies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