



REPABOLIKI YA AFERIKA BORWA

REPUBLIEK VAN SUID AFRIKA

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT

Section 9(1): Codes of Good Practice

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

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

STATEMENT 200: THE GENERAL RECOGNITION OF MANAGEMENT CONTROL

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

Arrangement of this Statement

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1 DEFINITIONS

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

- 1.1 **"BEE"** means black economic empowerment;
- 1.2 **"black women"** means black people who are women;
- 1.3 **"Board"** means those persons appointed by the Participants of a Measured Entity to undertake the management control of the Measured Entity. The Board is distinguishable from the Senior and Other Top Management by virtue of the fact that Senior and Other Top Management are primarily active in the operational day-to-day management while the Board is primarily active in the control function of the Measured Entity. This does not imply that members of the Board cannot also be Senior and Other Top Management. The term Board does not include persons appointed to that body as alternates;

- 1.4 **"Element"** means the measurable quantitative or qualitative elements of BEE compliance specified in Code 000, Statement 000;
- 1.5 **"Employee"** bears the same meaning as assigned in the Employment Equity Act. For the avoidance of doubt, a member of the Board who is not employed in the day-to-day management of a Measured Entity is not an Employee of that Measured Entity notwithstanding the fact he/she may be remunerated for the performance of that function;
- 1.6 **"Employment Equity Act"** means the Employment Equity Act of 1998, as amended or substituted;
- 1.7 **"Enterprise"** bears the same meaning as defined in Statement 100;
- 1.8 **"Executive Members of the Board"** mean those members of the Board who fall within the definition of "executive director" specified in the King Report;
- 1.9 **"Independent Non-Executive Board Members"** means those members of the Board who fall within the definition of "independent director" specified in the King Report;
- 1.10 **"Interim Constitution"** means the Constitution of the Republic of South Africa Act of 1993;
- 1.11 **"King Report"** means the King Report on Corporate Governance for South Africa 2002 authored by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa;
- 1.12 **"Measured Entity"** means any Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.13 **"Occupational Levels"** means the occupational levels specified in Form EEA9 gazetted as a regulation under the Employment Equity Act,
- 1.14 **"Other Top Management"** means Employees of a Measured Entity, other than Senior Top Management who are appointed by or upon the authority of the Board of that Measured Entity to undertake the day to day management of that Measured Entity and who are actively involved in the development and/or implementation of the Measured Entity's strategy insofar as it relates to their area of responsibility. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management;
- 1.15 **"Participants"** bears the same meaning as assigned in Statement 100;
- 1.16 **"Senior Top Management"** means Employees of a Measured Entity who are appointed by or upon the authority of the Board of that Measured Entity to undertake the day to day

management of that Measured Entity and who have individual responsibility for the overall management and for the financial management of that Measured Entity and who are actively involved in the development and/or implementation of the Measured Entity's strategy. Common examples of Senior Top Management include, without limitation, chief executive officers, chief operating officers and chief financial officers. This definition should be read in conjunction with the Occupation Levels, having specific regard to the Occupational Level of Top Management;

- 1.17 **"Statement 100"** means Code 100, Statement 100;
- 1.18 **"Target"** means the Targets attributed to the various criteria in the management control scorecard in paragraph 5;
- 1.19 **"the Act"** means the Broad-Based Black Economic Empowerment Act of 2003 as amended or substituted;
- 1.20 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement;
- 1.21 **"the Generic Scorecard"** means the balanced BEE scorecard included in Code of Good Practice 000, Statement 000;
- 1.22 **"Voting Right"** in relation to a member of the Board, refers to the level of control exercised by that person over the decisions of the Board. The Voting Rights in the hands of black people serving on the Board is expressed as the percentage that such votes hold to the total number of votes to which all members of that Board are entitled at a meeting of the Board; and
- 1.23 **"Weighting"** bears the same meaning as assigned in Code 000, Statement 000.

2 INTERPRETATION OF THIS STATEMENT

- 2.1 Certain terms defined in paragraph 1 are accompanied by examples that reference certain defined or understood terms and concepts that are used in relation to various officials and officers of a Measured Entity. Where such examples have been included, they may be used in the interpretation of the defined term,
 - 2.1.1 but should under no circumstances be considered to limit the generality of the defined term
 - 2.1.2 nor should the examples listed be deemed to constitute an exhaustive list of analogous terms and concepts to that defined term.
- 2.2 This statement should at all times be interpreted by reference to the Employment Equity Act.

3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the management control Element of broad-based black economic empowerment in respect of all Measured Entities.

4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 4.1 specify the scorecard for the measurement of the management control Element of BEE;
- 4.2 define the key measurement principles associated with the management and control Element of BEE;
- 4.3 specify the formula for measuring Board participation;
- 4.4 specify the formula for measuring top management participation; and
- 4.5 define the approach to awarding the bonus points under this statement.

5 MANAGEMENT CONTROL SCORECARD

The following table represents the criteria and methodology used for the purposes of deriving a score for management control in terms of this statement:

Management control criteria	Weighting points	Compliance Target
5.1 Board participation:		
5.1.1 Percentage of exercisable Voting Rights held by Members of the Board who are black people to the total of all Voting Rights exercised by all members of the Board	3	50%
5.1.2 Executive Members of the Board who are black people	1	50%
5.1.3 Executive Members of the Board who are black women	1	25%
5.2 Top Management participation:		
5.2.1 Percentage that Senior Top Management who are black people constitute of the total number of Senior	2	40%

	Top Management		
5.2.2	Percentage that Senior Top Management who are black women constitute of the total number of Senior Top Management	1	20%
5.2.3	Percentage that Other Top Management who are black people constitute of the total number of Other Top Management	1	40%
5.2.4	Percentage that Other Top Management who are black women constitute of the total number of Other Top Management	1	20%
5.3	Bonus points		
5.3.1	Percentage that black people who are Independent Non-Executive Board Members constitute of the total number of Independent Non-Executive Board Members	1	40%

6 KEY MEASUREMENT PRINCIPLES

In calculation of the scorecard referred to in paragraph 5, the following principles will apply consistently:

- 6.1 the Measured Entity can be awarded points in the scorecard through meeting the targets for participation of black people and black women at board and Top Management based upon the relative Weightings;
- 6.2 where a Measured Entity attains a score in respect of an individual management control criteria, as specified in the scorecard, which is in excess of the corresponding Weighting points, then that Measured Entity shall only be entitled to the corresponding Weighting points;
- 6.3 notwithstanding anything to the contrary in any statement in Code 300, where a Measured Entity does not differentiate between the Occupational Levels of Top Management and Senior Management in its returns rendered under the Employment Equity Act, those employees in the Occupational Level of Senior Management who undertake the responsibilities commonly associated with the Occupation Level of Top Management may be included in determining the composition of Senior Top Management and Other Top Management for the purposes of this statement. To the extent that a Measured Entity does not render such returns for any reason,

it shall nevertheless comply with this paragraph as if it were rendering returns;

6.4 to the extent that any person in the Occupation Level of Senior Management is included within Senior Top Management or Other Top Management under this statement, that person shall not be included in any result determined in accordance with any statement under Code 300; and

6.5 to the extent that the Measured Entity does not have a distinction between Senior Top Management and Other Top Management then only Senior Top Management shall be measured and the Weighting in respect of the item in:

6.5.1 paragraph 5.2.1 shall be increased by the amount of the Weighting in paragraph 5.2.3; and

6.5.2 paragraph 5.2.2 shall be increased by the amount of the Weighting in paragraph 5.2.4.

7 MEASUREMENT OF BOARD PARTICIPATION

7.1 The management control criteria provided for in paragraph 5.1.1, is calculated on the following basis:

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

Where

A is the score achieved in respect of a Measured Entity subject to measurement for the management control criteria specified in paragraph 5.1.1

B is the percentage that Voting Rights in the hands of black members of the Board hold to the Voting Rights of all members of the Board of that Measured Entity

C is the percentage compliance Target in respect of the applicable management control criteria being measured as specified in paragraph 5.1.1

D means the Weighting points allocated to the applicable management control criteria being measured as specified in paragraph 5.1.1

7.2 The management control criteria provided for in paragraphs 5.1.2 and 5.1.3, are calculated on the following basis:

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

Where

A is the score achieved in respect of a Measured Entity subject to measurement for the management control criteria specified in paragraphs 5.1.2 and 5.1.3

B is the percentage that black Executive Members of the Board hold to the total of all Executive Members of the Board of that Measured Entity

C is the percentage compliance Target in respect of the applicable management control criteria being measured as specified in paragraphs 5.1.2 and 5.1.3

D means the Weighting points allocated to the applicable management control criteria being measured as specified in paragraphs 5.1.2 and 5.1.3

8 MEASUREMENT OF TOP MANAGEMENT PARTICIPATION

The management control criteria provided for in paragraphs 5.2.1 to 5.2.4, are calculated on the following basis:

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

Where

A is the score achieved in respect of a Measured Entity subject to measurement for the management control criteria specified in paragraphs 5.2.1 to 5.2.4

B is the percentage that the measured category of black people serving in the applicable level of Top Management hold to the total of all members of that level of Top Management

C is the percentage compliance Target in respect of the applicable management control criteria being measured as specified in paragraphs 5.2.1 to 5.2.4

D means the Weighting points allocated to the applicable management control criteria being measured as specified in paragraphs 5.2.1 to 5.2.4

9 MEASUREMENT OF BONUS POINTS

The management control criteria provided for in paragraph 5.3.1, is calculated on the following basis:

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

Where

A is the score achieved in respect of a Measured Entity subject to measurement for the management control criteria specified in paragraph 5.3.1

B is the percentage that black Independent Non-Executive Board Members hold to the total of all Independent Non-Executive Board Members

C is the percentage compliance Target in respect of the applicable management control criteria being measured as specified in paragraph 5.3.1

D means the Weighting points allocated to the applicable management control criteria being measured as specified in paragraph 5.3.1