



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

STATEMENT 600: THE RECOGNITION OF ENTERPRISE DEVELOPMENT CONTRIBUTIONS

Issued under section 9(5) of the Broad-Based Black Economic Empowerment Act 53 of 2003 for public comment. Interested persons are invited to furnish the minister with comments on this proposed code within 60 days of the date of publication.

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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 **"Acceptable Valuation Standard"** means a valuation in Rand value of a Qualifying Enterprise Development Contribution, whether monetary or non-monetary, relevant to measurement under this statement. All such valuations shall be undertaken in accordance with normal valuation methodologies that represent standard market practice;
- 1.2 **"applicable interest rate"** means the prime interest rate as determined by the primary banker of the Measured Entity on the basis of the REPO rate set by the South African Reserve Bank;
- 1.3 **"BEE"** means black economic empowerment;

- 1.4 **"Beneficiary Entity"** means:
- 1.4.1 a micro enterprise which is an Exempted Micro Enterprise as defined in Code 1000 Statement 1000;
 - 1.4.2 an Enterprise in which in excess of 50% is owned by black people and which is a Level One to Six contributor to BEE as determined by reference to Code 000 Statement 000;
 - 1.4.3 an Enterprise which is a Level One to Three BEE contributor to BEE as determined by reference to Code 000 Statement 000, regardless of the black ownership status of the Enterprise;
 - 1.4.4 a Qualifying Small Enterprises in which in excess of 50% is owned by black people and which is a Level One to Six contributor to BEE as determined to Code 1000 Statement 1000; or
 - 1.4.5 a Qualifying Small Enterprises which is a Level One to Three BEE contributor to BEE as determined by reference to Code 1000 Statement 1000, regardless of the black ownership status of the Qualifying Small Enterprise.

For the purposes of this definition, the term **"50% owned by black people"** is to be interpreted as meaning an Enterprise in which black people hold more than 50% of the exercisable voting rights and more than 50% of the economic interest in that enterprise and in respect of which the full seven points under the net equity interest component of the ownership scorecard have been attained, such economic interest, voting rights and net equity interest will be measured using the principles and definitions set out in Code 100 Statement 100 provided that the modified flow-through, control and exclusions principles shall not be applied;

- 1.5 **"EBITDA"** means earnings before income tax, depreciation and amortisation interpreted in accordance with South African Generally Accepted Accounting Practice;
- 1.6 **"Enterprise"** shall have the same meaning as defined in Code 100 Statement 100;
- 1.7 **"Exempted Micro Enterprise"** has the meaning defined in Code 1000 Statement 1000;
- 1.8 **"Inception Date"** means a date specified by a Measured Entity as being the date from which its enterprise development contributions should be measured where that Measured Entity has initiated such contributions prior to the commencement date of this statement.

The Inception Date shall not be a date earlier than 5 years prior to the commencement date of this statement;

- 1.9 **"Measured Entity"** means an Enterprise as well as any organ of state or public entity subject to measurement under the Codes;
- 1.10 **"Non-Recoverable Contribution"** means the monetary value of Qualifying Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity in a form of grants, donation, discounts and other similar quantifiable benefits which are not recoverable by the Measured Entity;
- 1.11 **"Qualifying Enterprise Development Contributions"** means 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 and/or accelerating the development, sustainability and ultimate financial and operational independence of such Beneficiary Entities through the expansion of those Beneficiary Entities' financial and/or operational capacity;
- 1.12 **"Qualifying Small Enterprise"** has the meaning defined in Code 1000 Statement 1000; and
- 1.13 **"Recoverable Contribution"** means the monetary value of Qualifying Enterprise Development Contributions made by the Measured Entity to the Beneficiary Entity that must be repaid or returned to the Measured Entity upon the happening of a specified event;
- 1.14 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003.

2 INTERPRETATION OF THIS STATEMENT

- 2.1 When interpreting a provision of this statement, any reasonable interpretation which is consistent with the objectives of the Act and those set forth in paragraph 4 must be preferred over any other interpretation which is inconsistent with such objectives.
- 2.2 To the extent that any provision of this statement is inconsistent with the Act, the Act shall prevail.

3 APPLICATION OF THIS STATEMENT

This statement is to be used in the measurement of the enterprise development element of broad-based black economic empowerment in respect of all Measured Entities with the exception of the following:

- 3.1 any form of Measured Entity specifically dealt with in terms of another Statement in Code 600 to the exclusion of this statement; and
- 3.2 any Measured Entity that is expressly excluded from the provisions of this statement by the Minister by notice in a gazette.

4 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are:

- 4.1 specify the enterprise development scorecard;
- 4.2 specify the key measurement principles to be applied when calculating Qualifying Enterprise Development Contributions to BEE;
- 4.3 provide guidance as to the nature of monetary and non-monetary contributions;
- 4.4 specify the formula for the calculation of the individual criteria specified in the enterprise development scorecard; and
- 4.5 specify the basis for the award of bonus points.

5 THE ENTERPRISE DEVELOPMENT SCORECARD

- 5.1 The following table represents the criteria and methodology used for the purposes of deriving a score for enterprise development in terms of this statement:

Criteria		Weighting Points	Compliance Target
5.1.1	Cumulative Non-Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/Inception Date to the date of measurement.	6	2%
5.1.2	Cumulative Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/Inception Date to the date of measurement.	4	3%
5.1.3	Bonus Points		refer to paragraph 9

- 5.2 Where a Measured Entity attains a score in respect of any one of the criteria specified

in the enterprise development scorecard that is in excess of the corresponding Weighting points, then that Measured Enterprise shall only be entitled to the corresponding Weighting points.

6 KEY MEASUREMENT PRINCIPLES

- 6.1 Measured Entities shall be entitled to receive recognition for any Qualifying Enterprise Development Contributions that are capable of being quantified as having a Rand value using an Acceptable Valuation Standard.
- 6.2 Qualifying Enterprise Development Contributions of any Measured Entity shall be measured cumulatively from the commencement date of this statement until the date of measurement.
- 6.3 Notwithstanding paragraph 6.2, any Measured Entity that commenced making Qualifying Enterprise Development Contributions prior to the commencement date of this statement shall be entitled to designate an earlier Inception Date.
- 6.4 Where an earlier Inception Date has been designated, the Measured Entity will continue to be bound by that Inception Date for the continued duration of this statement
- 6.5 Qualifying Enterprise Development Contributions considered:
 - 6.5.1 Recoverable Contributions include, without limitation:
 - 6.5.1.1 the annualised value of the monthly average value of the investment in qualifying Beneficiary Entities;
 - 6.5.1.2 the annualised value of the monthly average value of the loans granted to qualifying Beneficiary Entities;
 - 6.5.1.3 the annualised value of the monthly average value guarantees given to Beneficiary Entities; and
 - 6.5.1.4 the value of credit facilities made available to qualifying Beneficiary Entities.
 - 6.5.2 Non-Recoverable Contributions include, without limitation:
 - 6.5.2.1 direct costs incurred by a Measured Entity in assisting and accelerating the development of Beneficiary Entities;
 - 6.5.2.2 any overhead costs of a Measured Entity directly attributable to Qualifying Enterprise Development Contributions;

- 6.5.2.3 provision by a Measured Entity of seed and developmental capital to Beneficiary Entities;
 - 6.5.2.4 preferential credit terms granted by a Measured Entity to Beneficiary Entities; and
 - 6.5.2.5 preferential terms granted by a Measured Entity in respect of its supply of goods and/or services to Beneficiary Entities.
- 6.6 The Rand value of certain enterprise development contributions will be calculated at a specified multiple of the quantified contributions. Such contributions and their multiples are as follows:
- 6.6.1 Qualifying Enterprise Development Contributions which directly contribute towards the creation of employment opportunities in rural communities and, in particular but without limitation, in any geographic areas identified in the government's integrated sustainable rural development and urban renewal programmes qualify for recognition at a multiple of 1.5 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards. This multiple will apply notwithstanding the award of any bonus points for Qualifying Enterprise Development Contributions which directly contribute to employment creation in South Africa in general;
 - 6.6.2 Qualifying Enterprise Development Contributions which assist and accelerate the development of Exempted Micro Enterprises, qualify for recognition at a multiple of 1.25 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards;
 - 6.6.3 Qualifying Enterprise Development Contributions which assist and accelerate the development of Beneficiary Entities which manufacture, produce or sell goods and/or services not previously produced or manufactured in South Africa qualify for recognition at a multiple of 1.5 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards; and
 - 6.6.4 Provided that such contributions are not made in respect of a warehousing fund owning an equity interest in the Measured Entity, monetary contributions to the funding of warehousing funds as contemplated in Code 100 Statement 102 qualify for recognition at a multiple of 1.25 to actual Rand value of such contributions determined in accordance with Acceptable Valuation Standards.
- 6.7 Save as provided in paragraph 6.6.4, no points shall be awarded under this statement to a

Measured Entity arising from any financial transaction concluded in respect of which points have been awarded under Code 100.

7 MONETARY AND NON-MONETARY CONTRIBUTIONS

7.1 Subject always to the definition of Qualifying Enterprise Development Contributions, the following monetary/non-monetary contributions will, without limitation, be considered:

7.1.1 the provision of seed or development capital;

7.1.2 contributions made to settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a Beneficiary Entity including, without limitation:

7.1.2.1 professional and consulting services;

7.1.2.2 licensing and/or registration fees;

7.1.2.3 industry specific levies and/or other such fees; and

7.1.2.4 IT services;

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

7.1.4 subject to paragraph 7.2, creation or development of capacity and expertise for Beneficiary Entities required to manufacture or produce goods and/or services previously not manufactured, produced or provided in the Republic of South Africa;

7.1.5 subject to paragraph 7.3, provision of preferential credit facilities;

7.1.6 subject to paragraph 7.2, facilitation of access to credit for Beneficiary Entities unable to access similar credit facilities through traditional means owing to a lack of credit history, high risk and/or lack of collateral;

7.1.7 subject to paragraph 7.4, provision of training and/or mentoring to Beneficiary Entities which will assist the Beneficiary Entities to increase their operational and/or financial capacity; and

7.1.8 subject to paragraph 7.5, the maintenance by the Measured Entity of an enterprise development unit which focuses exclusively on support of Beneficiary Entities or candidate Beneficiary Entities.

7.2 The creation and/or development of the capacity of Beneficiary Entities which will enable

them to manufacture and produce goods and/or provide services previously not available in the Republic of South Africa, may constitute a Qualifying Enterprise Development Contribution, and will be measured as the rand value of monetary contributions made as well as investments into, loans made to or guarantees given for a Beneficiary Entity.

7.3 Provision of preferential credit facilities to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise Development Contribution. Examples of such contributions include without limitation:

7.3.1 provision of finance to Beneficiary Entities at rates of interest below the applicable rate. Such contributions will be measured as the value of the differential between the actual interest rate provided to the Beneficiary Entity and the applicable rate;

7.3.2 relaxed security requirements or absence of security requirements for Beneficiary Entities unable to provide security for loans. Such contributions shall be measured as being 3% (three percent) of any positive differential between the initial capital value of the loan and the value of security taken; and

7.3.3 settlement of accounts with Beneficiary Entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided that the shorter period is no longer than 21 days. Preferential payment terms which extend beyond 21 days will not qualify as Qualifying Enterprise Development Contributions;

7.4 Provision of training and/or mentoring to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise Development Contribution. Such contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not be included in this cost. Furthermore, a clear justification must be supplied with respect to the calculation of such time costs incurred, commensurate with the level of seniority and expertise of the trainer or mentor. Common forms of such contribution include without limitation:

7.4.1 Professional and consulting services;

7.4.2 IT services; and

7.4.3 any other services which help to increase the entity's financial and/or operational capacity and which have not also been accounted for under skills development.

7.5 The maintenance of an enterprise development unit by the Measured Entity may

constitute a Qualifying Enterprise Development Contribution. Common examples of such contributions include without limitation the salaries and wages of staff and other expenses involved in the operation of such enterprise development unit. Notwithstanding the foregoing, only that portion of salaries and wages which relate to time spent by the staff in and the other expenses related to the promotion and implementation of enterprise development in respect of Beneficiary Entities or candidate Beneficiary Entities should be taken into consideration under enterprise development contributions.

7.6 Payments made by the Measured Entity to third parties to perform enterprise development on the Measured Entity's behalf may constitute a Qualifying Enterprise Development Contribution.

8 MEASUREMENT OF QUALIFYING ENTERPRISE DEVELOPMENT CONTRIBUTIONS

8.1 Qualifying Enterprise Development Contributions that are considered Non-Recoverable Contributions are calculated on the following basis:

$A = \frac{B}{C} \times D$
<p>Where</p> <p>A is the score achieved in respect of the Non-Recoverable Contributions made by the Measured Entity</p> <p>B is the cumulative Non-Recoverable Contributions made by the Measured Entity in favour of Beneficiary Entities measured from the commencement of the Statement or the designated Inception Date until the date of measurement.</p> <p>C is compliance Target in respect of the Non-Recoverable Contributions as specified in paragraph 5.1.1</p> <p>D is the Weighting points allocated to the applicable enterprise development criteria being measured as specified in paragraph 5.1.1</p>

8.2 Qualifying Enterprise Development Contributions that are considered Recoverable Contributions are calculated on the following basis:

<p>Formula A</p> $B = \frac{D}{E}$
<p>Where</p> <p>B is the number to be used in formula C below and represents the Recoverable Contributions made</p>

relative to compliance target contemplated in paragraph 5.1.2

D is cumulative annualised value of monthly Recoverable Contributions made by the Measured Entity as a percentage of cumulative annualised value of EBITDA measured from the commencement/Inception Date to the date of measurement

E is the percentage compliance Target in respect of the recoverable contributions as specified in paragraph 5.1.2

Formula B

$$C = \frac{G \times F}{G}$$

Where

C is the number to be used in formula C and represents the interest differential between the actual interest charged on Recoverable Contributions and the Applicable Interest Rate

F is the actual interest rate paid by the Beneficiary Entity from the commencement/Inception Date to the date of measurement

G is the Applicable Interest Rate

Formula C

$$A = B \times 1 + \frac{C}{5} \times H$$

Where

A is the score under paragraph 5.1.2

B is the result of the calculation in formula A

C is the result of the calculation in formula B

H is the Weighting points allocated to the applicable enterprise development criteria being measured as specified in paragraph 5.1.2

- 8.3 To the extent that a Measured Entity makes only Non-Recoverable Contributions to the exclusion of Recoverable Contributions, the weighting allocated to Non-Recoverable Contributions in paragraph 5.1.1 shall be increased to 10 and the corresponding target will be increased to 3.3%.
- 8.4 To the extent that a Measured Entity makes only Recoverable Contributions to the exclusion of Non-Recoverable Contributions, there shall be no adjustment to the enterprise development Scorecard.

9 MEASUREMENT OF BONUS POINTS

- 9.1 Measured Entities are encouraged to assist in the creation of employment opportunities in the Republic of South Africa, through their Qualifying Enterprise Development Contributions. To this end, Measured Entities will be awarded a bonus point for Qualifying Enterprise Development Contribution which directly contribute towards increased employment levels in the preceding year. Such bonus points are not carried over from one year to another and qualification will be determined in each year by reference to Qualifying Enterprise Development Contributions made in the preceding year. In addition, the bonus point will only be awarded against submission by the Measured Entity of adequate proof that their Qualifying Enterprise Development Contributions directly contributed to the creation of increased employment levels.