



**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 000: FRAMEWORK FOR THE MEASUREMENT OF BROAD BASED BLACK ECONOMIC  
EMPOWERMENT**

**STATEMENT 010: GUIDELINES FOR THE DEVELOPMENT AND GAZETTING OF  
TRANSFORMATION CHARTERS**

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

- 1.1 **"BEE"** means broad-based black economic empowerment;
- 1.2 **"Elements"** bears the meaning defined in Code 000 Statement 000;
- 1.3 **"Sector Code"** means a Code in series 800 gazetted by the Minister under section 9 of the Act with a view to giving effect to the specific requirements and circumstances applicable to a particular sector;
- 1.4 **"Target"** means the targets attributed to the various Elements in the Generic Scorecard;
- 1.5 **"the Act"** means the Broad-Based Black Economic Empowerment Act of 2003;
- 1.6 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act;

- 1.7 **"the Generic Scorecard"** means the balanced BEE scorecard referred to in Code 000 Statement 000;
- 1.8 **"Transformation Charters"** means the sectoral transformation charters referred to in section 12 of the Act; and
- 1.9 **"Weighting"** has the meaning assigned in Code 000 Statement 000.

## **2 INTERPRETATION OF THIS STATEMENT**

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

## **3 APPLICATION OF THIS STATEMENT**

This statement applies to all Transformation Charters.

## **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 specify the processes for the gazetting of Transformation Charters in terms of section 12 of the Act;
- 4.2 specify the process for the development and gazetting of Sector Codes in terms of section 9 of the Act;
- 4.3 specify the status of Transformation Charters and Sector Codes;
- 4.4 specify the status of enterprise BEE plans; and
- 4.5 recommend the procedures and processes (as set out in Annexe 010-A) to be followed in formulating Transformation Charters, which include:
- 4.5.1 qualification criteria for formulating Transformation Charters;
- 4.5.2 the constitution of Charter Councils;
- 4.5.3 the consultative process;
- 4.5.4 the nature of sectoral representivity required;
- 4.5.5 the identification of key stakeholders; and
- 4.5.6 the role of Charter Councils.

## **5 PROCEDURE FOR THE GAZETTING OF TRANSFORMATION CHARTERS IN TERMS OF SECTION 12 OF THE ACT**

- 5.1 The representative body of a sector seeking to gazette a Transformation Charter in terms of section 12 must:
  - 5.1.1 apply in writing to the Minister; and
  - 5.1.2 provide evidence of the compliance of that Transformation Charter with the requirements of section 12 of the Act.
- 5.2 The Minister must refuse an application to gazette a Transformation Charter if the applicant has failed to comply with the requirements of section 12 of the Act.
- 5.3 If the Minister refuses to grant an application as contemplated in paragraph 5.2,
  - 5.3.1 the Minister must notify the applicant of that decision in writing within two months ; and
  - 5.3.2 an applicant may reapply for the gazetting of that Transformation Charter by revising its submission to take into account the grounds for the previous refusal.
- 5.4 If the Minister grants an application as contemplated in paragraph 5.1, the Minister must gazette that Transformation Charter as soon as is practicable.

## **6 PROCEDURE FOR THE DEVELOPMENT AND GAZETTING OF SECTOR CODES**

If a sector intends to develop a Sector code or convert a Transformation Charter into a Sector Code, the representative body for that sector may apply in writing to the Minister and provide:

- 6.1 the transformation charter or proposed sector code, signed by:
  - 6.1.1 the associations, organisations and other stakeholders that participated in the development of that document; and
  - 6.1.2 the ministry of the South African government having jurisdiction over that particular sector;
- 6.2 an analysis of the transformation charter or proposed sector code by an independent party, appointed in consultation with the Minister, with the costs and expenses of such a third party analysis borne by the applicable sector, setting out whether:
  - 6.2.1 the applicable Transformation Charter has been developed by the representatives of major stakeholders in that sector;
  - 6.2.2 the applicable Transformation Charter advances the objectives of the Act;

- 6.2.3 the common commercial and other characteristics within the entities operating in the relevant sector justify the development of a Sector Code;
- 6.2.4 all of the principles of all of the Elements in the Generic Scorecard have been fully addressed in the applicable Transformation Charter;
- 6.2.5 its definitions and principles are consistent with those in the Codes;
- 6.2.6 the Targets and the Weightings assigned to the Elements in the applicable Transformation Charter are consistent with those applied in Codes 100 – 700;
- 6.2.7 the key measurement principles underpinning the measurement of the Elements contained in the applicable Transformation Charter deviate from those contained in Codes 100 – 700;
- 6.2.8 the Transformation Charter provides a clear definition of the scope of the sector to which it will be applied;
- 6.2.9 the Transformation Charter has adequately dealt with the funding requirements applicable to the attainment of BEE compliance within the applicable sector;
- 6.2.10 the applicable Transformation Charter or proposed Sector Code deals adequately with:
  - 6.2.10.1 the BEE challenges in the applicable sector;
  - 6.2.10.2 the applicable sector's vision for achieving BEE Targets and timetables for compliance; and
  - 6.2.10.3 the institutional and management mechanisms that will co-ordinate, facilitate, monitor and evaluate the implementation of the Sector Code, as well as the provisions relating to the compilation of reports on the status of broad-based black economic empowerment within that sector and the sharing of specific relevant BEE information within that sector with the Advisory Council and approved accredited verification agencies;
- 6.2.11 any other issues and commitments relevant to the sector, in order to enable its participants to advance the objectives of broad-based black economic empowerment; and
- 6.2.12 the mandate and the powers of the persons exercising powers under the mechanisms contemplated in paragraph 6.2.10.3 were determined in consultation with the relevant minister of the South African government having jurisdiction over that sector.

- 6.3 In addition, the third party analysis must indicate whether there are any inconsistencies between the applicable or proposed Sector Code and the content of Codes 100-700 in respect of Weightings and Targets and in the event of any inconsistencies, the analysis must explain those deviations to demonstrate that:
- 6.3.1 they do not render the applicable proposed Sector Code inconsistent with the objectives of the Act;
  - 6.3.2 if implemented, they will not result in substantial or undesirable distortions in the operation of the Codes or in the economy; and
  - 6.3.3 they have been adequately justified on sound economic principles and/or developmental grounds pertaining to the sector.
- 6.4 The Minister must refuse an application contemplated in this paragraph 6 if:
- 6.4.1 any of the principles of all of the Elements referred to in the Generic Scorecard are not fully addressed as contemplated in paragraph 6.2.4;
  - 6.4.2 there are deviations in the key measurement principles to be applied in the measurement of BEE compliance as contemplated in paragraph 6.2.7;
  - 6.4.3 there are deviations in the definitions of beneficiaries of BEE or related matters as contemplated in paragraph 6.2.5;
  - 6.4.4 any inconsistencies in respect of Targets and Weightings as referred to in paragraph 6.2.6 are not fully justified in accordance with the provisions of paragraph 6.3;
  - 6.4.5 there is an inadequacy or a potential for ambiguity in the definition of the scope of the sector as referred to in paragraph 6.2.8; or
  - 6.4.6 the funding requirements of the particular sector as referred to in paragraph 6.2.9 have not been adequately addressed.
- 6.5 Where a Transformation Charter submitted for conversion into a Sector Code seeks to introduce a new Element on the basis of a valid justification on the same basis as contemplated in paragraph 6.3, the introduction of that new Element will not, in itself, be construed as representing a deviation from the key measurement principles.
- 6.6 The Minister may appoint a person to represent him as a member of the applicable sector's representative body.
- 6.7 If upon receipt of the documents referred to in paragraphs 6.1 and 6.2, the Minister

determines that, based upon the content of those documents, a Sector Code for the applicable sector is not fully justified, the Minister may:

- 6.7.1 refer the application back to the representative body for the applicable sector with a request to the sector to either:
  - 6.7.1.1 reconsider the content of their Transformation Charter or proposed Sector Code; or
  - 6.7.1.2 withdraw their application; or
- 6.7.2 refer the documents to the Advisory Council for further consideration or recommendations.
- 6.8 The Minister will issue a draft Sector Code for public comment, as provided for in section 9(5) of the Act, if the Minister determines that a Sector Code is justified after:
  - 6.8.1 considering the comprehensive independent third party analysis referred to in paragraph 6.2; or
  - 6.8.2 reviewing an amended Transformation Charter or proposed Sector Code pursuant to paragraph 6.7.1 that substantially addresses all of the issues raised in the comprehensive independent third party analysis referred to in paragraph 6.2; or
  - 6.8.3 receiving a recommendation from the Council.
- 6.9 Upon receipt of any representations arising from the processes in section 9(5) of the Act, the Minister may:
  - 6.9.1 refer the draft Sector Code back to the representative body of the applicable sector with instructions to reconsider that draft Sector Code generally or to consider specific issues identified in the public commentary process; or
  - 6.9.2 refer the draft Sector Code and the public commentaries received in respect thereof to the Council for consideration.
- 6.10 If the Minister is satisfied that all of the issues raised in the public comments referred to in paragraph 6.8 have been adequately addressed, the Minister must gazette the Transformation Charter as a Sector Code in terms of section 9 of the Act.

## **7 STATUS OF TRANSFORMATION CHARTERS AND SECTOR CODES**

- 7.1 The gazetting of a Transformation Charter in terms of section 12 of the Act is evidence of the commitment by all stakeholders to promote BEE in the applicable sector and is not

binding upon organs of state or public entities.

- 7.2 The provisions of Codes 000 to 700 and any statements under those Codes remain applicable to any sector, which has successfully applied for the gazetting of their Transformation Charter in terms of section 12.
- 7.3 A Sector Code enjoys equal status with that of any other Code.
- 7.4 If any uncertainty arises in the interpretation of a Sector Code, the content of Code 100 – 700 shall prevail.

## **8 STATUS OF ENTERPRISE BEE PLANS**

- 8.1 All enterprises in the private sector are encouraged to develop their own enterprise BEE plans as part of their commitment to BEE.
- 8.2 An enterprise BEE plan serves as evidence of the voluntary commitment of an enterprise towards achieving those objectives.
- 8.3 An enterprise BEE plan does not enjoy any recognition under the Codes and will not be gazetted under the Act.

## **Annexe 010-A: Recommended Model Transformation Charter Formulation Process**

### **1 INTRODUCTION**

This Annexe is intended to provide guidance to sectors wishing to develop Transformation Charters. It is not intended to represent a legal requirement.

### **2 RECOMMENDED MODEL FOR THE DRAWING UP OF A TRANSFORMATION CHARTER:**

2.1 The following represents the matters to be considered by sectors wishing to develop a Transformation Charters for gazetting in terms of section 12 of the Act:

2.1.1 the sector seeking to gazette their Transformation Charter should interact or transact with the organs of state or public entities;

2.1.2 there should be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a Transformation Charter;

2.1.3 the sector should be significant in terms of:

2.1.3.1 the national strategic importance of the sector as determined by government; and

2.1.3.2 the volume and value of transactions taking place between the sector and organs of state or public entities collectively - this shall be measured in relation to the total volume and value of transactions taking place within the sector.

2.2 The following represents a recommended model for the drawing up of a Transformation Charter:

2.2.1 Public Proclamation of Charter: the intention by a sector to draw up a Transformation Charter should be communicated publicly. All efforts should be made to ensure that such communication would reach majority of relevant stakeholders.

2.2.2 Setting of Charter Mandate: the initiators of the Charter process propose the setting of the mandate of the Charter and the Charter's overall objectives. These initiators should then present a proposed mandate for the Charter, to relevant stakeholders. The final mandate of the Charter should then be set based on consultation with relevant stakeholders.

2.2.3 Appointment of a Steering Committee: it is recommended that the initiators of the Charter process appoint a Steering Committee to drive the Charter development process. This

Steering Committee should represent relevant groups of stakeholders and should largely consist of senior and influential members of entities, organisations or departments in the sector.

- 2.2.4 Appointment of relevant Working Groups: It is recommended that the Steering Committee appoint a number of working groups to assist in the drafting of the Charter. Working groups may be divided according to the Elements of the Generic Scorecard and, as such, may consist of experienced players in each Element. Alternately, the Steering Committee may appoint Working Groups divided according to other criteria, if these criteria will lead to a more effective drafting of the Charter.
- 2.2.5 First Draft: Based on recommendations by the appointed Working Groups, it is recommended that it be the responsibility of the Steering Committee to compile the first draft of the Charter for presentation to stakeholders.
- 2.2.6 Consultation with Stakeholders: the Steering Committee will communicate the key elements of the first draft of the Transformation Charter, including a draft of the Scorecard to be included in the charter, to stakeholders.

### **3 RECOMMENDED CONSULTING PROCESS, REPRESENTATIVES AND STAKEHOLDER IDENTIFICATION**

- 3.1 The consultation process for developing a Transformation Process may be undertaken in the following ways:
  - 3.1.1 a major gathering of the key stakeholders in the sector;
  - 3.1.2 workshops addressing particular issues to be dealt with in the Transformation Charter;
  - 3.1.3 sectoral-wide road shows; and/or
  - 3.1.4 other interactive mechanisms that would ensure that the relevant stakeholders are informed and their views acknowledged.
- 3.2 The relevant stakeholders may include:
  - 3.2.1 key enterprises within the sector;
  - 3.2.2 industry bodies for the sector and/or the relevant chamber of commerce;
  - 3.2.3 government, and in particular, the relevant government department(s) that interface(s) with the particular sector;

- 3.2.4 labour bodies or the relevant trade unions;
- 3.2.5 industry regulators and civil society organisations; and
- 3.2.6 any others with a relevant interest in participating in the sector.
- 3.3 It is recommended as a good practice that the steering committee have equitable representation to enable the participation of all the different stakeholders in the Transformation Charter formulation.
- 3.4 It is also recommended that a key consideration should be the implementation of innovative mechanisms to assist and ensure that under-resourced parties are informed and enabled to effectively contribute in the key strategic processes, especially in the following stages:
  - 3.4.1 establishing various working groups
  - 3.4.2 setting the mandates of the respective charter committees;
  - 3.4.3 participating actively in the various charter committees;
  - 3.4.4 outlining the key principles and qualitative undertakings to be contained in the Transformation Charter;
  - 3.4.5 setting targets and weightings for the sector as contained in the balanced BEE scorecard;
  - 3.4.6 providing for implementation, reporting and monitoring mechanisms;
  - 3.4.7 presentation of the Transformation Charter to the Advisory Council, the ministry in the government responsible for the relevant sector and to the Minister of Trade and Industry.
  - 3.4.8 setting the mandate and the powers of the Charter Council
  - 3.4.9 good corporate governance principles must be applied in the daily functions of the Steering Committee and/or any executive body reporting to the Charter Council.

#### **4 THE ROLE OF CHARTER COUNCILS**

- 4.1 The following represents a recommended model to establish Charter Councils:
  - 4.1.1 equitable composition of stakeholders in the members of the Charter Council;
  - 4.1.2 application of good corporate governance principles in the daily functions of the Charter Council.
- 4.2 The functions of the Charter Council may include the following:

- 4.2.1 to provide guidance on sector-specific matters affecting BEE in entities within the sector;
  - 4.2.2 to compile reports on the status of broad-based black economic empowerment within the sector, and
  - 4.2.3 to share information with the national monitoring mechanism and approved accreditation agencies, which can have specific relevance to BEE in the sector.
- 4.3 The Charter Councils should report to the Minister and to the Advisory Council on progress made by the sector subject to the relevant Transformation Charter. Such reports should typically contain qualitative and quantitative information regarding sectoral performance, including detailed information pertaining to all of the elements of the sector's BEE balanced scorecard.
- 4.4 It is recommended that the Charter Councils implement programmes intended to ensure that sufficient independent capacity of verification agencies exists to support their Transformation Charter.