

An EMPOWERDEX Guide



The Codes of Good Practice

Scorecard Essentials

OWNERSHIP

Code 100 – **Ownership**

Statement 100 – Measurement of Ownership

Statement 102 – Sale of Assets

Statement 103 – Equity Equivalents for Multinationals



Ownership

Ownership

Code Series 100

Measurement of the Ownership Element of B-BBEE

Statement 100

The General Principles for Measuring Ownership

What you can expect:

- The Ownership Scorecard
- Key measurement principles
- Broad-Based Ownership Scheme
- Private Equity Funds
- Section 21 companies and companies limited by guarantee
- Trusts
- Options and Share Warrants
- Equity instruments carrying preferent rights

The Essence of Statement 100:

The Ownership Scorecard allocates points for:

- Voting Rights
- Economic Interest
- Ownership fulfillment
- Net Value
- Bonus points for New Entrants and the broadening of ownership to include black participants in employee ownership schemes, broad-based ownership schemes and co-operatives.

Key measurement principles

A company receives points for participation by black people in its rights of ownership. The rights of ownership are defined in terms of the scorecard as **Voting Rights** and **Economic Interest**. Black people may hold their rights of ownership in a company as direct participants or as participants through:

- 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

- a Broad-Based Ownership Scheme
- an Employee Ownership Scheme
- a Trust.

Ownership can be calculated using:

- The Flow-Through Principle
- The Modified Flow-Through Principle
- The Exclusion Principle

Inclusion of Mandated Investments in ownership calculation

While the draft Codes of Good Practice excluded Mandated Investments from the ownership calculation all together, the finalized Codes allow Measured Entities to **elect whether they will include or exclude Mandated Investments** in their calculations.

However, the following rules apply:

- Measured Entities **cannot selectively include or exclude** Mandated Investments. An election to exclude one Mandated Investment is an election to exclude all Mandated Investments and visa versa
- A Measured Entity that elects 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 originating from that Mandated Investment
- Rights of ownership held by Mandated Investments (including pension funds) may be excluded. However, the **maximum percentage** of ownership of any measured entity **that may be so excluded is 40%**.

Mandated Investments are defined as any investments made by or through any third party regulated by legislation on behalf of the actual owner of the funds pursuant of a mandate given by the owner to the third party. The following are the examples of Mandated Investments listed by the Codes:

Investments made by or for a collective investment scheme as defined in the Collective Investments Scheme Control Act of 2002

Investments made by or for a pension fund as defined in the Pension Fund Act of 1956

Investments made by or for a medical scheme as defined in the Medical Schemes Act of 1998 out of member's funds

Investments made by or for long-term insurers as defined in the Long-Term Insurance Act of 1998 out of policyholder funds

Investments made by or for a friendly society as defined in the Friendly Societies Act of 1956

Investments made by or for a bank as defined in the Banks Act of 1990 out of depositor funds as opposed to own reserves

Investments made by or for a mutual bank as defined in the Mutual Banks Act of 1993 out of depositor funds as opposed to own reserves

Continued recognition after exit of BEE participants

A Measured Entity is allowed to recognize a portion of black ownership **after a black participant has exited** through the sale or loss of shares subject to the following criteria:

- The black participant must have held the shares for **at least 3 years**
- **Value must have been created** in the hands of black people
- Black participation arising from continued recognition **cannot contribute more than 40%** of a Measured Entity's score on the ownership scorecard.

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

- There must be a written tripartite agreement between the Measured Entity, the black Participant and the Lender unless the Measured Entity is the Lender
- The period over which the points were allocated or recognised will **not exceed** the period over which the shares were held for example, if the shares were held for three years prior to loss, then the Measured Entity may only claim recognition for those shares for a maximum of up to three years.

To clarify, the principle of "once empowered, always" empowered will **only** apply to the sale of shares, and are conditional on the creation of value in the hands of black people, and **not** to the loss of shares.

Continued ownership recognition can be calculated by multiplying the following:

- The value created in black hands as a percentage of the Measured Entity's value at the date of the loss of shares
- The B-BBEE status of the Measured Entity based on the balanced scorecard at the date of measurement and

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

Some Rules that apply to other forms of ownership

Black participants holding rights of ownership in a Measured Entity through the following may contribute to the ownership scorecard:

- Broad-Based Ownership and Employee Ownership Schemes
- Section 21 companies and companies not limited by guarantee
- Trusts

Contributions by these entities are calculated as follows:

- a **maximum of 40%** of the total points on the ownership scorecard by meeting a basic set of rules set out in Annexure 100 (B)
- and a **100% of the total points** on the ownership scorecard if they meet additional qualification criteria as set out in Annexure 100 (B).

Black participants holding rights of ownership in a Measured Entity through the following may also contribute to the ownership scorecard subject to meeting criteria set out in Annexure 100 (B):

- Private Equity Funds
- Options and share warrants
- Equity instruments carrying preferent rights.

Ownership
Code Series 100

Measurement of the Ownership Element of B-BBEE

Statement 102

Recognition of the Sale of Assets

What you can expect:

- Application of this statement
- Key measurement principles
- Measurement principles
- Recognition of Sale of Assets, Equity Instruments and Business

The Essence of Statement 102:

Statement 102 sets out the conditions where the Sale of Assets, Equity Instruments and Businesses will be recognised and how ownership points arising from such transactions can be determined.

Qualification criteria:

For ownership points to be recognised the transaction must:

- Result in the **creation of sustainable businesses or business opportunities** for black people
- Result in the **transfer of specialized skills or productive capacity** to black people.

Measurement principles:

The calculation of ownership points must be based on:

- The value of the transaction
- The value of Equity Instruments held by black participants in the purchasing entity
- The carrying value of the Acquisition Debt of black participants in the purchasing entity

Ownership Code Series 100

Measurement of the Ownership Element of B-BBEE

Statement 103

Recognition of Equity Equivalent Programmes for Multinationals

What you can expect:

- Key measurement principles
- Recognition of Equity Equivalent Programmes
- Measurement of Equity Equivalent Programmes
- Two specific examples of Equity Equivalent Programmes
- Specific rules on Multinationals

The Essence of Statement 103:

Statement 103 defines the means by which Multinationals may apply for recognition of Equity Equivalent Programmes and specifies how Multinational contributions to the ownership element are measurable.

NOTE

Any Equity Equivalent contributions towards the Ownership Element of B-BBEE made by Multinationals are measurable against the **value of their operations in South Africa**

and

Equity Equivalent Programmes **are limited** to Multinationals subject to a Global Practice.

Recognition of Equity Equivalent Programmes

- The minister may approve certain Equity Equivalent Programmes **after** the Multinational has consulted with the sectoral line ministry, premiers or other stakeholders in any government department, provincial government or local government, with respect to their Equity Equivalent proposal
- Any Equity Equivalent Programme forming part of a **Sector Code constitutes an approved programme**
- Equity Equivalent Programmes are **preferably Sector Specific**, but the minister may consider requests for approval of programmes that are not Sector Specific.

Equity Equivalent Programmes may involve:

- Programmes that support:
 - **The Accelerated and Shared Growth Initiative for South Africa**
 - **The Joint Initiative for Priority Skills**
 - **The National Skills Development Strategy**
- Any of the programmes of the Department of Trade and Industry
- Programmes that **promote enterprise creation** in respect of co-operatives that are:
 - More than 50% owned by black people
 - More than 30% owned by black women
 - More than 50% owned by black designated groups
- Any other programmes that **promote social advancement** or contribute to the overall socio-economic development of South Africa.

Equity Equivalent Programmes must include:

- A full description of programme objectives and projected outcomes
- Qualification criteria for participation in the programme
- Timelines for implementation and delivery with milestones against which progress is measurable
- Methodology for valuing contributions, including the calculation of points under the Ownership Scorecard
- Details about the sponsors of the programme.

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

Enterprises in which

- Black people hold **more than 50%** of the exercisable voting rights and more than 50% of the economic interest
- Black women hold **more than 30%** of the exercisable voting rights and more than 30% of the economic interest
- Black designated groups hold **more than 50%** exercisable voting rights and more than 50% of the economic interest
- **Communities**, natural persons or groups of natural persons where at least 75% of the beneficiaries are black people and the same percentage of the economic value is derived by black people.

Examples of Equity Equivalent Programmes

Enterprise Creation

If the Equity Equivalent contribution of a Multinational involves the creation of a new enterprise:

- The new enterprise **must qualify as a Value-Adding Enterprise**
- The creation of the new enterprise **cannot be double counted** by also contributing to the Multinational's score under Enterprise Development
- 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.

Investment in social advancement

An Equity Equivalent contribution of a Multinational that involves enhanced Socio-Economic Development:

- Must comply fully with the Socio-Economic Development element of the Codes
- **Cannot be double counted** by also contributing to the Multinational's score under Socio-Economic Development

Specific Rules for Multinationals

- Any contributions towards the ownership element of B-BBEE made by Multinational Businesses or South African Multinationals **are measurable against the value of their operations in South Africa**
- A standard valuation method must be used to determine the value of the South African operations
- In calculating their ownership score, Multinational Businesses or South African Multinationals **must apply the Exclusion Principle** to any portion of the business value of their South African operations gained from non-South African sources
- In calculating their ownership score, Multinational Businesses may recognise **the sale of Equity Instruments in non-South African enterprises** to black people on the following basis:
 - The non-South African enterprises must form **part of a chain of ownership** between the Multinational business and its eventual holding company
 - The transaction must comply with South African **exchange control** requirements
 - The percentage of the value of the Equity Instruments sold to the black buyers to the value of the Multinational Business represents the recognizable black claim to Economic Interest
 - The percentage of Exercisable Voting Rights ceded to the buyers of the Equity Instruments represents the recognizable black voting rights
 - The rights of ownership in the Equity Instruments are comparable to rights that would have accrued had the Equity Instruments been in the Multinational Business.