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# **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 100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT**

**STATEMENT 103: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY  
MULTINATIONAL COMPANIES**

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 of:
- 1.1.1 an asset;
  - 1.1.2 an Economic Interest;
  - 1.1.3 a Local Multinational Enterprise; or
  - 1.1.4 any other instrument or right which is relevant to measurement under this statement,

- undertaken in accordance with normal valuation methods that represent standard market practice;
- 1.2 **"BEE"** means black economic empowerment;
  - 1.3 **"black people"** shall have the meaning defined in Code 000 Statement 000;
  - 1.4 **"Economic Interest"** shall have the meaning defined in Statement 100;
  - 1.5 **"Enterprise"** shall have the meaning defined in Statement 100;
  - 1.6 **"Equity Equivalent"** means an equity equivalent contribution made by a Local Multinational Enterprise of a Multinational Business in terms of an approved:
    - 1.6.1 public program or scheme of any government department, provincial government or local government in the Republic of South Africa which has been approved by the minister as entitling that Local Multinational Enterprise to indicative points under the Ownership Scorecard; or
    - 1.6.2 provided for in terms of a Sector Code gazetted in terms section 9 of the Act and Code 000 Statement 010 of the Codes;
  - 1.7 **"Equity Interest"** shall have the meaning defined in Statement 100;
  - 1.8 **"Exercisable Voting Rights"** shall have the meaning defined in Statement 100;
  - 1.9 **"Global Policy"** means a globally and uniformly applied restriction upon the alienation of Equity in or the sale of businesses of the Multinational Affiliates of a Multinational Business imposed by that Multinational Business or by a regulator which has lawful jurisdiction over that Multinational Business or by any law of application to the Multinational Business. Where the Global Policy is imposed by a regulator or by law, such Global Policy must substantially have been in existence prior to the date of promulgation of the Act;
  - 1.10 **"Local Multinational Enterprise"** means a South African based Enterprise which is a Multinational Affiliate of a Multinational Business or of a South African Multinational, it being recorded that a branch of an external company as defined in the Companies Act of 1973 shall constitute a Local Multinational Enterprise;
  - 1.11 **"Multinational Affiliate"** means a business owned or controlled by a Multinational Business or a South African Multinational which operates in a particular country or in a particular region other than the country and/or region in which that Multinational Business

- or South African Multinational maintains its headquarters;
- 1.12 **"Multinational Business"** means a business having its international headquarters in a jurisdiction other than the Republic of South Africa and which owns and/or controls a Local Multinational Enterprise as one of its Multinational Affiliates, provided that a Multinational Business as herein defined shall not include a South African Multinational;
- 1.13 **"Net Equity Interest"** shall have the meaning defined in Statement 100;
- 1.14 **"Ownership Bonus Points"** refer to the points specified in paragraph 5.4 of the Ownership Scorecard;
- 1.15 **"Ownership Fulfilment"** shall have the meaning defined in Statement 100;
- 1.16 **"Ownership Scorecard"** means the scorecard used for the measurement of ownership Statement 100;
- 1.17 **"Participant"** shall have the meaning defined in Statement 100;
- 1.18 **"South African Multinational"** means any Enterprise which:
- 1.18.1 currently maintains its international headquarters in the Republic of South African and which maintains Multinational Affiliates in other jurisdictions; or
- 1.18.2 previously maintained its international headquarters in the Republic of South Africa and having moved those headquarters to another jurisdiction, now maintains a Local Multinational Enterprise in the Republic of South Africa as one of its Multinational Affiliates;
- 1.19 **"Statement 100"** means Code 100 Statement 100 issued in terms of section 9 of the Act;
- 1.20 **"Statement 101"** means Code 100 Statement 101 issued in terms of section 9 of the Act;
- 1.21 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003; and
- 1.22 **"the Codes"** means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this statement.

## 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**

This statement is to be used in the measurement of contributions towards the ownership Element of broad-based black economic empowerment in respect of Multinational Businesses and South African Multinationals.

### **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 define the key measurement principles applicable to measurement of ownership contributions by Local Multinational Enterprises of Multinational Businesses and South African Multinationals;
- 4.2 provide for the recognition of Equity Equivalent contributions made by Multinational Businesses;
- 4.3 provide for the recognition of ownership contributions arising from sales of offshore Equity Interests;
- 4.4 provide for the recognition of ownership contributions arising from sales of businesses or assets by the Local Multinational Enterprises of Multinational Businesses or South African Multinationals; and
- 4.5 specify the approach to measurement of ownership contributions made by South African Multinationals.

### **5 KEY MEASUREMENT PRINCIPLES**

- 5.1 It is a fundamental principle of this statement that any contributions towards the ownership Element of broad-based black economic empowerment made by Multinational Businesses or South African Multinationals should be measured:
  - 5.1.1 against the value (measured using an Acceptable Valuation Standard) of the Local Multinational Enterprise of a Multinational Business or of a South African Multinational;  
or
  - 5.1.2 against the value (measured using an Acceptable Valuation Standard) of the South African operations of a South African Multinational maintaining its headquarters in the Republic of South Africa.
- 5.2 Contributions made by South African Multinationals maintaining a Local Multinational

Enterprise as one of their Multinational Affiliates and those made by Multinational Businesses which represent in value a specific percentage of the value of the Local Multinational Enterprise of such South African Multinationals or Multinational Businesses, will qualify for recognition under the Ownership Scorecard as notional ownership by black people of that Local Multinational Enterprise at an equivalent percentage.

- 5.3 Contributions made by South African Multinationals maintaining their international headquarters in the Republic of South Africa which represent in value a specific percentage of the value of their South African operations will qualify for recognition under the Ownership Scorecard as ownership by black people of that South African Multinational at an equivalent percentage.

## **6 RECOGNITION OF EQUITY EQUIVALENTS**

- 6.1 The provisions of Statement 100 apply unchanged to the measurement of the ownership Element of broad-based black economic empowerment in respect of Local Multinational Enterprises. Local Multinational Enterprises will have to evidence the following requirements in order to qualify for equity equivalents:

- 6.1.1 the Multinational Business must own and control the entire Equity in the Local Multinational Enterprise;
- 6.1.2 the Multinational Business must be subject to a Global Policy; and
- 6.1.3 the Multinational Business will suffer substantial commercial harm if it were to implement transactions designed to give effect to the provisions of Statement 100.

- 6.2 The minister may from time to time, and in consultation with the sectoral line minister(s), premiers or other stakeholders in any government department, provincial government or local government approve certain specified public programs or schemes as entitling Local Multinational Enterprises of Multinational Businesses to Equity Equivalents. This recognition does not apply to any South African Multinationals.

- 6.3 To the extent that a Local Multinational Enterprise is entitled to receive indicative points on the Ownership Scorecard in accordance with an Equity Equivalent, those points shall be included in that Local Multinational Enterprise's Ownership Scorecard.

- 6.4 Any Local Multinational Enterprise shall be entitled, at any time, to make written representations to the minister for the recognition of Equity Equivalents.

- 6.5 The content of Equity Equivalents approved in accordance with a Sector Code as

contemplated in Code 000 Statement 010 will be dealt with in such Sector Code.

## **7 SALE OF OFFSHORE EQUITY INTERESTS**

7.1 Any South African Multinational maintaining its international headquarters outside of the Republic of South African and any Multinational Business shall be entitled to receive recognition for the sale of an Equity Interest to black Participants in:

7.1.1 any company interposed between the Local Multinational Enterprise and its ultimate holding company; or

7.1.2 its ultimate holding company

7.2 In order to facilitate the provisions of paragraph 7.1, a Local Multinational Enterprise shall be entitled to claim points in its Ownership Scorecard on the basis of notional participation by black Participants in that Local Multinational Enterprise based upon the sale of offshore Equity Interest as follows:

7.2.1 Economic Interest to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;

7.2.2 Exercisable Voting Rights to which notional black Participants are entitled in the Local Multinational Enterprise shall be recognised at a level equivalent to the percentage that the value of the Equity Interest sold to black people holds to the value of the Local Multinational Enterprise, both values measured in accordance with Acceptable Valuation Standards;

7.2.3 Net Equity Interest and Ownership Fulfilment points arising from a sale of offshore Equity Interests shall be measured in compliance with the principles established in Statement 100, save that wherever reference is made to the measurement of the value of the "Measured Enterprise", that reference will be interpreted as relating to the value of the Local Multinational Enterprise; and

7.2.4 Ownership Bonus Points will be measured on the same basis as specified in Statement 100 as modified by reference to paragraph 7.2.1 above in respect of the measurement of Economic Interest.

7.3 Notwithstanding the provisions of paragraph 7.2, no points shall be claimable by the Local

Multinational Enterprise under the Ownership Scorecard in respect of:

- 7.3.1 Exercisable Voting Rights arising from the sale of offshore Equity Interest unless the Exercisable Voting Rights in the Local Multinational Enterprise are irrevocably transferred to the black people owning that offshore Equity Interest for the continued duration of their ownership of that offshore Equity Interest; and
- 7.3.2 Economic Interest (including also derived points in respect of Net Equity Interest and Ownership Bonus Points) arising from the sale of offshore Equity Interest unless the black people owning that offshore Equity Interest are entitled to receive Economic Interest arising from offshore Equity Interest which are equivalent to or greater than those which would arise from an entitlement to share in the profitability of the Local Multinational Enterprise.

## **8 SALE OF SOUTH AFRICAN BUSINESSES OR ASSETS BY MULTINATIONAL BUSINESSES OR SOUTH AFRICAN MULTINATIONALS**

- 8.1 Any sale of any South African business or asset by a Multinational Business/ South African Multinational or its Local Multinational Enterprise (where applicable) shall be fully recognisable under Statement 101, save that any reference to the measurement of the value of the "Measured Enterprise" in Statement 101, shall for this purposes of this statement be interpreted as relating to the value of the Local Multinational Enterprise.