



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

**STATEMENT 104: THE RECOGNITION OF OWNERSHIP CONTRIBUTIONS MADE BY PUBLIC  
ENTITIES AND ORGANS OF STATE**

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 "BEE" means black economic empowerment;
- 1.2 "black designated groups" has the meaning defined in Statement 100;
- 1.3 "black people" has the meaning defined in Code 000 Statement 000;
- 1.4 "Designated Public Entities" means the public entities referred to in paragraph 7;
- 1.5 "Economic Interest" has the meaning defined in Statement 100;
- 1.6 "Equity Interest" has the meaning defined in Statement 100;
- 1.7 "Exercisable Voting Rights" has the meaning defined in Statement 100;
- 1.8 "Generic Scorecard" has the meaning defined in Code 000 Statement 000;

- 1.9 **"Ownership Bonus Points"** refer to the points specified in paragraph 5.4 of the Ownership Scorecard;
- 1.10 **"Realisation Points"** has the meaning defined in Statement 100;
- 1.11 **"Statement 100"** means Code 100, Statement 100 issued in terms of section 9 of the Act;
- 1.12 **"Statement 101"** means Code 100, Statement 101 issued in terms of section 9 of the Act;
- 1.13 **"the Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.14 **"the Codes"** means all Codes of Good Practice issues in terms of section 9 of the Act, including without limitation, this Statement; and
- 1.15 **"the Ownership Scorecard"** means the scorecard used for the measurement of ownership Code 100, Statement 100.

## **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 public entities and organs of state.

## **4 OBJECTIVES OF THIS STATEMENT**

The objectives of this statement are to:

- 4.1 specify the basis for the award of indicative points for the ownership Element of the broad-based black economic empowerment in respect of public entities wholly owned by organs of state (other than Designated Public Entities) and in respect of organs of state; and
- 4.2 specify the basis for recognition of ownership of Equity Interests held by Designated Public Entities as being black ownership.

## **5 INTRODUCTION**

- 5.1 Public entities (other than Designated Public Entities) wholly owned by organs of state and organs of state themselves that are subject to measurement under the Codes are incapable of being measured under Statement 100 since ownership by organs of state is expressly excluded from measurement under that statement. Accordingly, such entities

must be assigned an indicative score for ownership in order to complete their Generic Scorecard.

- 5.2 In certain exceptional circumstances, particular Designated Public Entities may be:
- 5.2.1 established with the specific objective of furthering the objectives of the Act and/or of broad-based economic empowerment in general; and
  - 5.2.2 allocated Equity Interests in private sector enterprises emerging from the sales of state owned assets or the licensing of new enterprises with a view to holding such Equity Interests in support of the objectives contained in the Act.

As such, these Designated Public Entities may enjoy a special status for the purposes of the Codes in that, notwithstanding the fact that they may be wholly owned by organs of state, they may be deemed to be black owned for the purposes of measurement under Statements 100 and 101.

## 6 INDICATIVE OWNERSHIP SCORES FOR PUBLIC ENTITIES AND ORGANS OF STATE

As public entities wholly owned by organs of state (other than Designated Public Entities) and organs of state cannot be measured as having any black ownership in terms of Statement 100, the following formula is provided in order to allow such entities to be awarded an indicative score for the ownership element:

$$A = \frac{B}{80} \times 20$$

Where

**A** is the score for the ownership Element any entity measured in terms of this statement

**B** is the score achieved by that entity on the remainder of the Generic Scorecard other than the ownership Element.

## 7 RECOGNITION OF OWNERSHIP BY DESIGNATED PUBLIC ENTITIES

- 7.1 The minister may from time to time by notice in the gazette, designate certain public entities as Designated Public Entities and may, in so doing, stipulate the parameters of the entitlement of those Designated Public Entities to benefit from the provisions of this paragraph 7.
- 7.2 Ownership of an Equity Interest by a Designated Public Entity which conforms to the parameters specified by the minister as contemplated in paragraph 7.1, must, for the

purposes of measurement under Statements 100 and 101, be regarded as ownership by notional black people holding an entitlement to:

- 7.2.1 the percentage of Economic Interest and the percentage Exercisable Voting Rights attached to the Designated Public Entity owned Equity Interest in the following proportions:
  - 7.2.1.1 100% owned by black people;
  - 7.2.1.2 40% owned by black women; and
  - 7.2.1.3 10% owned by black designated groups;
- 7.2.2 fully paid-up and unrestricted ownership of the all Economic Interest attached to the Designated Public Entity owned Equity Interest such that all Realisation Points are awarded pro rata to the percentage of Economic Interest attached to that Equity Interest; and
- 7.2.3 such Ownership Bonus Points as are pro rata to the percentage of Economic Interest attached to that Equity Interest.
- 7.3 The provisions of this paragraph 7 will cease to apply when the Designated Public Entity alienates the Equity Interest or if the minister revokes the status conferred in terms of paragraph 7.1.