

**AMENDED FSC SERIES FS100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT**

**STATEMENT FS100: THE GENERAL PRINCIPLES FOR MEASURING OWNERSHIP**

Issued in terms of Section 9 (1) of the Broad-Based Black Economic Empowerment Amendment Act 46 of 2013

**Arrangement of Statement 100**

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**1 OBJECTIVES OF STATEMENT FS100**

The objectives of this statement are to:

- 1.1 Specify the scorecard for measuring the Ownership element of B-BBEE for Banks, Long-term Insurers, Short-term Insurers and the Stock Exchanges and their members;
- 1.2 Specify the scorecard for measuring the Ownership element of B-BBEE for all other financial institutions;
- 1.3 Define the key measurement principles associated with the Ownership element of B-BBEE;
- 1.4 Specify the specific measurement principles applicable to various types of enterprises;
- 1.5 Specify the specific measurement principles applicable to various types of equity instruments; and
- 1.6 Specify the formula for measuring voting rights, economic interest, net value points, realisation points and bonus points.

**2 THE OWNERSHIP SCORECARD**

Table 2a represents the indicators and method for calculating a score for Ownership for local measured entities that are Banks, Long-term Insurers, Short-term Insurers, Stock Exchanges and members of Stock Exchanges:

		Description	Points	Target
2.1	2.1.1	Exercisable voting rights in the measured entity in the hands of black people	4	25%+ 1 Vote
	2.1.2	Exercisable voting rights in the measured entity in the hands of black women	2	10%
2.2	2.2.1	Economic interest rights in the measured entity to which black people are entitled	3	25%
	2.2.2	Economic interest rights in the measured entity to which black women are entitled	2	10%
	2.2.3	Economic interest in the hands black designated groups; black participants in Employee Share Ownership Programmes; black people in Broad-based Ownership Schemes and black participants in co-operatives	3	3%
	2.2.4	New entrants	3	2%
2.3		Net value	6	Formula Annexe 100(C)
		Total before bonus	23	
2.4		Bonus: Direct/Indirect ownership in excess of 15%	3	10%
2.5		Bonus: Economic interest and voting rights above 32.5%	2	1 point @ 32.5% and 1 point @ 40%

Table 2a

If a measured entity wishes to claim ownership credits for indirect ownership it must provide a competent person's report that has estimated the value of B-BBEE ownership held through indirect ownership.

Table 2b represents the indicators and method for calculating a score for ownership for measured entities that are exempted from ownership in terms of FS000, Statement 000 paragraph 2.11:

	Ownership	Weighting	Targets	Notes
2.1	Additional Black Business Growth Funding or other qualifying equity equivalent contributions	20	25%	Target is equal to 25% of the value of the measured entity as at 31/12/2010
	Bonus Points			
2.2	Black Business Growth Funding or other qualifying equity equivalent contributions in the financial sector	5	25%	

Table 2b

### 3 KEY MEASUREMENT PRINCIPLES

#### 3.1 General principles

- 3.1.1 An enterprise receives points for participation by black people in its rights of ownership, using the ownership scorecard in paragraph 2a or 2b of this Amended FSC statement. Black people may hold their rights of ownership in a measured entity as direct participants or as participants through a form of business such as:
- a. A Company as defined in the Companies Act of 2008 (as amended);
  - b. A close corporation;
  - c. A co-operative;
  - d. Any form of juristic person recognised in South African law;
  - e. A partnership or other association of natural persons;
  - f. A Broad-Based Ownership Scheme;
  - g. An Employee Ownership Programme; and
  - h. A Trust.
- 3.1.2 Any domestic or foreign measured entity may also receive points on the ownership scorecard in paragraphs 2a (domestic entities and other multinationals) or 2b (only qualifying multinationals), via equity equivalent contributions. These are dealt with in detail in Code FS100, Statement 103.
- 3.1.3 Measured entities may also receive points on the ownership scorecard in paragraphs 2a or 2b through the sales of assets. These are dealt with in detail in Code FS100, Statement 102.
- 3.1.4 For local branches of foreign banks who commenced operation after 01/01/2011, the target in Table 2b is based on the value of the business as at the date at the end of the first financial year end.
- 3.1.5 Measured entities that are not Banks, Long-term Insurers, Short-term Insurers, Stock Exchanges or members of Stock Exchanges will be measured for Ownership as per the DTI Generic Scorecard and requirements as per the B-BBEE Codes of Good Practice, gazetted on the 11<sup>th</sup> October 2013, gazette no. 36928.

**3.2 Sub-minimum Requirements:**

- 3.2.1 A measured entity is required to achieve a minimum of 40% of the net value points (i.e. 40% x 6 points = 2,4 points) based on Annexe 100 (C), paragraph 4 of this statement.
- 3.2.2 Non-compliance with this sub-minimum target, as detailed in paragraph 3.2.1, will result in the achieved B-BBEE status level being discounted in accordance with paragraph 3.7 in statement FS000 of the CoGP.

**3.3 The Flow-through Principle:**

- 3.3.1 As a general principle, when measuring the rights of ownership of any category of black people in a measured entity, only rights held by natural persons are relevant. If the rights of ownership of black people pass through a juristic person, then the rights of ownership of black people in that juristic person are measurable. This principle applies across every tier of ownership in a multi-tiered chain of ownership until that chain ends with a black person holding rights of ownership.
- 3.3.2 An exception to this general principle exists with regard to recognition in the ownership scorecard for domestic measured entities via equity equivalents. This exception to the general principle is dealt with in further detail in Code FS100, Statement 103.
- 3.3.3 The method of applying the flow-through principle across one or more intervening juristic persons is as follows:
- a. Multiply the percentage of the participants' rights of ownership in the juristic persons through which those rights pass by the percentage of rights of ownership of each of those juristic persons successively to the measured entity; and
  - b. The result of this calculation represents the percentage of rights of ownership held by the participant.

**3.4 The Modified Flow-through Principle:**

- 3.4.1 A Measured Entity applying this Modified Flow-Through Principle cannot benefit from the Exclusion Principle.
- 3.4.2 The modified flow-through principle applies to any B-BBEE owned or controlled company owned by the measured entity.
- 3.4.3 In calculating exercisable voting rights in paragraph 2.1.1 and economic interest in paragraph 2.2.1, the following applies:
- 3.4.3.1 For existing BEE deals, where in the chain of ownership, black people have a flow-through level of participation in excess of 50%, then only once in that chain may such black participation be treated as if it were 100% black.
- 3.4.3.2 For BEE deals concluded after the date of gazetting of this amended Code, where in the chain of Ownership, Black people have a flow-through level of participation of at least 51%, and then only once in the entire ownership structure of the Measured Entity, such Black participation may be treated as if it were 100% Black.
- 3.4.4 The modified flow-through principle may only be applied in the calculation of the indicators in paragraphs 2.1.1, which sets out the voting rights of black people, and 2.2.1, which describes the economic interest of black people, in table 2a. In all other instances, the flow-through principle applies.

**3.5 The Exclusion of specified entities when determining ownership:**

- 3.5.1 When determining ownership in a measured entity, ownership held directly by organs of state or public entities in the Republic of South Africa must be excluded.
- 3.5.2 Exclusion of ownership held by the organs of state or public entities is to be effected before any other ownership discounting methods are applied.

**3.6 B-BBEE Facilitator Status:**

3.6.1 Notwithstanding paragraphs 3.5.1 and 3.5.2, the Minister of Trade and Industry may, by notice in the Government Gazette, designate certain organs of state or public entities as B-BBEE facilitators. In calculating their ownership score, measured Entities must treat B-BBEE facilitators as having rights of ownership held:

- a. 100% by black people;
- b. 40% by black women;
- c. 20% by black designated groups;
- d. Without any acquisition debts; and
- e. Without any third-party rights.

**3.7 Mandated Investments:**

3.7.1 When determining ownership in a measured entity, rights of ownership of Mandated Investments may be excluded.

3.7.2 The maximum percentage of the ownership of any measured entity that may be so excluded is 40%.

3.7.3 Mandated Investments are those investments as defined in Schedule 1 of the CoGP published in Government Gazette No. 36928, with examples of mandated investments in Annexe 100 (A).

3.7.4 Entities that elect not to exclude mandated investments when 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 measurable in the measured entity and originating from that mandated investment.

3.7.5 A measured entity cannot selectively include or exclude mandated investments and an election to exclude one mandated investment is an election to exclude all mandated investments and vice versa.

**3.8 Dilution due to regulatory requirements:**

3.8.1 Any dilution in the percentage of black ownership in a measured entity that occurs due to the entity having to increase its capital base as a direct result of new or existing regulatory requirements, will for the purposes of this Amended FSC not result in a dilution of the percentage black ownership claimed on the scorecard in paragraph 2, Table 2a.

3.8.2 A measured entity may exclude ownership arising in future as a direct result of any new regulatory requirements to increase the capital base of the measured entity.

3.8.3 This principle will not apply if the institution is required to raise additional capital due to it having written "bad business".

**3.9 The recognition of ownership after the sale or loss of shares by black participants:**

3.9.1 A measured entity is allowed to recognise a portion of black ownership after a black participant has exited through the sale or loss of shares. The details of the requirements will be set out in Guidance Note. The portion recognisable where such sale or loss occurs is as follows:

3.9.1.1 In the event of a dilution in the percentage of black ownership in a measured entity, as a result of black participants electing to sell their shares and realise the net value attributable to those shares when they have become eligible for sale or transfer, the net value percentage created for black participants at the date of exit can be carried forward in terms of paragraph 2, Table 2a above, subject to the following conditions:

- a. The black participant has held those shares for a minimum period of three (3) years;
- b. The net value must have been created for the benefit of black people; and

- c. Transformation has taken place within the measured enterprise using the comparable B-BBEE recognition level from the period of entry of black participants to their exit.
- 3.9.1.2 A measured entity subject to code FS600 (banks and life offices) can top up the shortfall in its ownership points through the provision of Black Business Growth Funding, as an equity equivalent that becomes available on exit of empowerment partners. Such financing can be provided at an individual company level or as a collaborative effort with other industry players. Equity Equivalence per statement FS103 may be applied over and above the mechanisms applied in this paragraph 3.9.1.2. Where a measured entity elects this top-up through the Black Business Growth Fund, the 5% maximum Equity Equivalent contribution stated in paragraph 2.6 of FS103 will not apply, i.e. a measured entity may do an equity equivalent over the 5% limit.
- 3.9.1.3 The extent of the equity equivalent will be determined using the following criteria:
- a. Target net value created for black people by the measured entity as at the date of exit, less actual net value created for black people by the entity at the date of exit. The difference between these two figures can form the basis for the measured entity's contribution to the equity equivalent.
- 3.9.2 Further to the above, the measured entities not subject to code FS600 i.e. entities other than banks and life offices, can top up the shortfall in its ownership points after a black participant has exited through the sale of shares through enterprise development contributions over and above the targets contained in code FS400, or by way of an equivalent value to support black students studying at post-school education and training institutions in South Africa. Where a measured entity elects this top-up equity equivalent contribution, the 5% maximum Equity Equivalent contribution stated in paragraph 2.6 of FS103 will not apply, i.e. a measured entity may do an equity equivalent over the 5% limit. The extent of the equity equivalent will be determined using criteria contemplated under 3.9.1.3 a.
- 3.9.3 In the event of a dilution in the percentage of black ownership in a measured entity as a result of all other sales of shares except the sale of shares described in paragraphs 3.8 or 3.9.1 or 3.9.2 above, a portion of the percentage may be recognisable subject to the following criteria:
- a. The black participant has held those shares for a minimum period of three years;
- b. Net value based on the time-based graduation factor in Annexe 100 (C) must have been created for black people, i.e. a portion of the debt acquired to purchase the equity must have been repaid, or the selling price of the shares must be higher than the purchase price; and
- c. Transformation has taken place within the entity using the comparable B-BBEE recognition level from the period of entry of black participants to their exit.
- 3.9.4 The formula for calculating continued recognition for sales of shares in circumstances as contemplated in paragraph 3.9.3 is contained in paragraph 5 of Annexe 100 (C) of this Code Statement. Black participation arising from continued recognition of black ownership cannot contribute more than 40% of the score on the ownership scorecard.
- 3.9.5 In the case of a loss of shares by a black investor, the following additional rules apply:
- 3.9.5.1 A written tripartite agreement between the measured entity, the black participant and a lender must record the loan or security arrangement, unless the measured entity is the lender; and

- 3.9.5.2 The period during which the continued recognition points are allocated or recognisable will not exceed the period over which the shares were held.
- 3.9.6 The ownership points in paragraph 3.9.5 (which deals with the loss of shares, unless that loss of shares is outside the control of the measured entity) that are attributable to the entity, will be calculated by multiplying the following elements:
- 3.9.6.1 The value created for black participants as a percentage of the value of the measured entity at the date of the loss of shares as a percentage of the entity's value; and
- 3.9.6.2 The ownership points attributable to the measured entity on the date of sale or loss.
- 3.9.7 The formula for measuring the percentage of continued recognition is as follows:

$$A = B \times C \times D$$

Where

**A** is the continued recognition after the loss of shares

**B** is the percentage ownership for each of the indicators in the ownership scorecard held immediately prior to the loss

**C** is the net value as per formula "Loss 1" below

**D** is most recent B-BBEE recognition level of the measured entity (not more than one year old and based on all elements excluding ownership).

**Formula: Loss 1:**

$$A = (B - C) / D$$

Where

**A** is the deemed net value

**B** is the value of the lost shares as at the date of loss

**C** is the carrying value of any debt in relation to the lost shares as at the date of loss

**D** is value of the measured entity as at the date of loss

#### **4 BROAD-BASED OWNERSHIP AND EMPLOYEE OWNERSHIP SCHEMES**

- 4.1 Black participants in Broad-Based Ownership Schemes and Employee Share Ownership Programmes (ESOPs) Programmes holding rights of ownership in a measured entity may contribute:
- 4.2 A maximum of 40% of the total points on the Ownership scorecard of the measured entity if they meet the qualification criteria set out in Annexe 100(B).
- 4.3 100% of the total points on the Ownership scorecard of the measured entity if they meet the additional qualification criteria set out in Annexe 100(B).

#### **5 PRIVATE EQUITY FUNDS**

- 5.1 A measured entity may treat any of its ownership arising from a private equity fund as if that ownership were held by black people, where the private equity fund meets the following criteria:

- 5.1.1 At least 51% of any of the private equity managers' exercisable voting rights associated with the equity instruments through which the private equity fund holds rights of ownership, must be held by black people;
- 5.1.2 At least 51% of the private equity fund's executive management and senior management must be black people; and
- 5.1.3 At least 51% of the profits made by the private equity fund manager after realising any investment made by it, must by written agreement, accrue to black people;
- 5.2 The term 'profit' in this instance is deemed to be profit from the operations of the private equity fund manager and the carried interest that the private equity fund manager (and/or its associated entities, provided that at least 51% of the profits of the associated entities accrue to the private equity fund manager) receives after realising any investment made by it;
- 5.3 The private equity fund manager must be a black owned company as defined;
- 5.4 The private equity fund manager must invest at least 51% of the value of *the South African funds* in management in companies that have at least a 25% direct black shareholding, post investment of the investment by the private equity fund, using the modified flow-through principle;
- 5.5 The private equity fund manager can facilitate direct black shareholding at the time of entering into the transaction if the target company does not meet the requirement of at least 25% black shareholding at the time that the transaction is concluded;
- 5.6 This determination will be made at each measurement date and the status given to the private equity fund manager will be applicable for a period of 12 months;
- 5.7 In recognition of the fact that it is currently a challenge for private equity fund managers to find companies to invest in, that already have a significant black shareholding, they are allowed to achieve the 51% target over a period of time based on the formulation detailed below. It must be noted that this formulation is in line with that of the net value calculation above. This rule will apply to all investments made after 11 October 2014. The commencement date is the later of 11 October 2014 and the date of establishment of a new fund:
- 5.7.1 Within one year from the commencement date, more than 5% of the value of funds invested by the private equity fund must at all times be invested in enterprises that have at least 25% direct black shareholding;
- 5.7.2 Within two years from the commencement date, more than 10% of the value of funds invested by the private equity fund must at all times be invested in enterprises that have at least 25% direct black shareholding;
- 5.7.3 From the first day of the third year and the last day of the fourth year from the commencement date, more than 20% of the value of funds invested by the private equity fund must at all times be invested in enterprises that have at least 25% direct black shareholding;
- 5.7.4 From the first day of the fifth year and the last day of the sixth year from the commencement date, more than 30% of the value of the funds invested by the private equity fund must at all times be invested in enterprises that have at least 25% direct black shareholding;
- 5.7.5 From the first of the seventh year and the last day of the eighth year from the commencement date, more than 40% of the value of the funds invested by the private equity fund must at all times be invested in the enterprises that have at least 25% direct black shareholding;



- 5.7.6 From the first day of the ninth year and beyond from the commencement date, at least 51% of the value of the funds invested by the private equity fund must at all times be invested in enterprises that have at least 25% direct black shareholding;
- 5.8 The measurement of at least 51% of the value of funds invested by any private equity fund that must be invested in enterprises with at least 25% direct black shareholding is to be measured with reference to the cost of the investment made by the private equity fund;
- 5.9 In the case of private equity funds that were fully invested prior to 11 October 2014, investments by the fund managers will be considered as being made by black people if the private equity fund management entities meet the following criteria:
- 5.9.1 At least 51% of any of the private equity fund manager's exercisable voting rights associated with the equity instruments through which the private equity fund holds rights of ownership in a measured entity, must be held by black people;
- 5.9.2 At least 51% of the profits accruing to the private equity fund manager after realising any investment made by it, must by written agreement, accrue to black people; and
- 5.10 The private equity fund manager must be a B-BBEE owned company.

## **6 NON-PROFIT COMPANIES AND COMPANIES LIMITED BY GUARANTEE**

- 6.1 A measured entity may elect to include or exclude these companies for the purposes of measuring ownership in terms of this statement.
- 6.2 A non-profit company or company limited by guarantee that houses a Broad-Based Ownership Scheme or an ESOP is subject to the provisions governing those types of schemes and not to this paragraph.
- 6.3 When a measured entity elects to exclude such companies, it can do so by excluding up to 40% of the level of their ownership completely from the determination of its compliance with the ownership target.
- 6.4 A measured entity electing not to exclude these non-profit companies 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 measurable in the measured entity and originating from those companies.
- 6.5 Black participants in such companies holding rights of ownership in a measured entity may contribute:
- 6.5.1 A maximum of 40% of the total points on the ownership scorecard of the measured entity if they meet the qualification criteria for Broad-Based Ownership Schemes set out in Annexe 100(B) and ESOP set out in Annexe 100(B).
- 6.5.2 100% of the total points on the ownership scorecard of the measured entity if they meet the additional qualification criteria set out for Broad-Based Ownership Schemes in Annexe 100(B) and ESOP set out in Annexe 100(B).

## **7 TRUSTS**

- 7.1 Black participants in a trust holding rights of ownership in a measured entity may contribute:
- 7.2 A maximum of 40% of the total points on the ownership scorecard of the measured entity if the trust meets the qualification criteria for trusts set out in Annexe 100(B).
- 7.3 100% of the total points on the ownership scorecard of the measured entity if they meet the additional qualification criteria set out for trusts in Annexe 100(B).

**8 OPTIONS AND SHARE WARRANTS**

- 8.1 Exercisable voting rights and economic interest will be recognised where a participant holds an instrument granting the holder the right to acquire an equity instrument or part thereof at a future date, if the following requirements are met:
- 8.2 The exercisable voting rights attached to that instrument are irrevocably transferred to the holder for the option period and are exercisable by the holder before acquiring the equity instrument.
- 8.3 The value of any economic interest is irrevocably transferred for the option period and paid to the holder of that instrument before the exercise of that right.
- 8.4 The value of an instrument must be determined by using a standard valuation method for calculating the net value.

**9 EQUITY INSTRUMENTS CARRYING PREFERENTIAL RIGHTS**

- 9.1 An equity instrument carrying preferential rights is measurable in the same manner as an ordinary equity instrument.
- 9.2 An equity instrument carrying preferential rights that has the characteristics of a debt, regardless of whether the debt is that of an enterprise or of a participant, is an ordinary loan. If the debt is that of a black participant, it may be subject to measurement in current equity interest.
- 9.3 In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured in current equity interest. The remainder is measurable as an ordinary equity instrument.

**10 NET VALUE**

- 10.1 Net value reflects the economic value of ownership rights after taking into account the carrying value of any acquisition debt.
- 10.2 Points are awarded in accordance with the formula in Annexe 100(C). The formula reflects that all acquisition debt should be extinguished within nine years of the acquisition of equity interests by participants in order to score full points.

**11 THE BONUS POINTS IN TABLE 2A**

- 11.1 A measured entity with 15% direct black economic interest, can receive a maximum of 3 points for an additional 10% economic interest held by black participants held either as direct or indirect ownership, measured in increments of 0.75 points for every 2.5% additional economic interest.
- 11.2 All contributions that are considered as ownership (including sales of assets, sales of shares, equity equivalents and indirect ownership) count in paragraphs 2.4 of Table 2a.

**12 THE BONUS POINTS IN TABLE 2B**

- 12.1 The bonus points relating to paragraph 2.2 of Table 2b are available only to local branches of foreign entities. Measured entities that qualify as local branches of foreign entities may meet their entire ownership targets through Code FS100, Statement 103.
- 12.1.1 A foreign branch may receive a maximum of five bonus points if it satisfies its equity equivalent contribution requirements (as per Code FS100, Statement 103) by contributing the total required amount for Black Business Growth Funding or other qualifying equity equivalents in the financial sector. If a foreign branch funds transactions to the value of 12, 5% in the financial sector, it may receive 2, 5 bonus points –  $[(12.5\% / 25\%) \times 5]$ .

## ANNEXE FS100 (A)

## Examples of Mandated Investments

Description of Investment	Portion Subject to Exclusion Principle
Investments made by or for a South African collective investment scheme as defined in the Collective Investments Control Act of 2002	Full Value
Investments made by or for a South African pension fund as defined in the Pension Fund Act of 1956	Full Value
Investments made by or for a South African medical scheme as defined in the Medical Schemes Act of 1998, out of members' funds	Portion recorded as made out of members' funds
Investments made by or for South African long-term insures as defined in the Long-term Insurance Act of 1998, out of policy holders' funds	Portion recorded as made out of policy holders' funds
Investments made by or for friendly societies as defined in the Friendly Societies Act of 1956	Full Value
Investments made by or for a South African bank as defined in the Banks Act of 1990, out of depositors' funds as opposed to own reserves	Depositor portion determined by apportioning investment in the ratio that the depositor funds to own reserves
Investments made by or for a South African mutual bank as defined in the Mutual Banks Act of 1993, out of depositors' funds as opposed to own reserves	Depositor portion determined by apportioning investment in the ratio that the depositor funds to own reserves

**ANNEXE FS100 (B)****RULES ON CERTAIN TYPES OF ENTERPRISES****1. RULES FOR BROAD-BASED OWNERSHIP SCHEMES**

The following rules apply to Broad-Based Ownership Schemes:

- 1.1 the management fees of the scheme must not exceed 15%;
- 1.2 the constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application;
- 1.3 the constitution of the scheme must define the Participants and the proportion of their claim to receive distributions;
- 1.4 a written record of the name of the Participants or the use of a defined class of natural person satisfies the requirement for identification;
- 1.5 a written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit;
- 1.6 the fiduciaries of the scheme must have no discretion on the above-mentioned terms;
- 1.7 at least 85% of the value of benefits allocated by the scheme must accrue to Black people;
- 1.8 at least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme;
- 1.9 at least 50% of the fiduciaries of the scheme must be Black people and at least 25% must be Black women;
- 1.10 the chairperson of the scheme must be independent;
- 1.11 the constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar;
- 1.12 the scheme fiduciaries must present the financial reports of the scheme to Participants yearly at an annual general meeting of the scheme; and
- 1.13 on winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to the beneficiaries or an entity with similar objectives.

**2. RULES FOR EMPLOYEE SHARE OWNERSHIP SCHEMES**

The following rules apply to Employee Share Ownership Schemes (ESOP):

- 2.1.1 The scheme constitution must define the participants and the proportion of their claim to receive distributions;
- 2.1.2 A written record of the name of the participants or the use of a defined class of natural person satisfies the requirement for identification;
- 2.1.3 A written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit; and
- 2.1.4 The fiduciaries of the scheme must have no discretion on the above-mentioned terms. The participants must take part in:
  - 2.1.4.1 Appointing at least 50% of the fiduciaries of the scheme; and
  - 2.1.4.2 Managing the scheme at a level similar to the management role of shareholders in a company having shareholding;
- 2.1.5 The constitution, or other relevant statutory documents of the scheme must be available, on request, to any participant in an official language in which that person is familiar;
- 2.1.6 All accumulated economic interest of the scheme is payable to the participants at the earlier of a date or event specified in the scheme constitution or on the termination or winding-up of the scheme; and
- 2.1.7 The scheme fiduciaries must present the financial reports of the scheme to participants yearly at an annual general meeting of the scheme.

### **3 RULES FOR TRUSTS**

- 3.1 The qualification criteria for the recognition of trusts are as follows:
- 3.1.1 The trust deed must define the beneficiaries and the proportion of their entitlement to receive distributions;
- 3.1.2 A written record of the names of the beneficiaries or the use of a defined class of natural person satisfies the requirement for identification;
- 3.1.3 A written record of fixed percentages of entitlement or the use of a formula for calculating entitlement satisfies the need for defining proportion of benefit;
- 3.1.4 The trustees must have no discretion on the above-mentioned terms; and
- 3.1.5 On winding-up or termination of the trust, all accumulated Economic Interest must be transferred to the beneficiaries or to an entity representing the interest of the participants or class of beneficiaries.

### **4 RULES FOR FAMILY TRUSTS**

- 4.1 The qualification criteria for the recognition of Family Trusts are as follows:
- 4.1.1 The trust deed must define the beneficiaries and the proportion of their entitlement to receive distributions;
- 4.1.2 A written record of the names of the beneficiaries or the use of a defined class of natural persons satisfies the requirement of defining beneficiaries;
- 4.1.3 A use of a formula for calculating entitlement satisfies the need for defining proportion of benefit;
- 4.1.4 Only the trustees must have discretion on the above-mentioned terms; and
- 4.1.5 On winding-up or termination of the trust, all accumulated Economic Interest must be transferred to the beneficiaries or to an entity representing the interest of the participants or class of beneficiaries.

### **5 ADDITIONAL CRITERIA APPLICABLE TO TRUSTS**

- 5.1 For a measured entity to obtain the maximum points on its ownership scorecard from shareholding by a trust, the measured entity must be in possession of a certificate issued by a competent person to the effect;
- 5.2 That the trust was created for a legitimate commercial reason, which must be fully disclosed; and
- 5.3 That the terms of the trust do not directly or indirectly seek to circumvent the provisions of the Amended FSC and the Act.

### **6 ADDITIONAL CRITERIA APPLICABLE TO BROAD-BASED OWNERSHIP SCHEMES AND EMPLOYEE OWNERSHIP SCHEMES:**

- 6.1 For a measured entity to obtain the maximum points on its ownership scorecard, the following additional requirements must be met by a Broad-Based Scheme or Employee Share Ownership Scheme:
- 6.1.1 A track-record of operating as a Broad-Based Ownership Scheme or ESOP, or in the absence of such a track-record demonstrable evidence of full operational capacity to operate as a Broad-Based Ownership Scheme or ESOP; and
- 6.1.2 Operational capacity must be evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises and all other necessary requirements for operating a business.

**ANNEXE F S 100 (C)****1 MEASUREMENT OF VOTING RIGHTS**

The calculation of the ownership indicators provided for in paragraphs 2.1 and 2.2 is as follows:

$$A = B/C \times D$$

Where

**A** is the score achieved for the measured entity for the measured ownership indicator

**B** is the percentage of exercisable voting rights held by black participants in a measured entity as a percentage of all voting rights of that entity

Where equity equivalents are utilised, the equity equivalents shall be deemed to hold voting rights that rank *equally* with ordinary shareholder voting rights and 50% of the deemed voting rights shall be deemed to be in favour of black women.

**C** is the percentage compliance target for exercisable voting rights for the applicable measured ownership indicator in paragraphs 2.1.1 and 2.1.2

**D** is the weighting points allocated to the applicable measured ownership indicator in paragraphs 2.1.1 and 2.1.2

If an enterprise gains a score in the formula above that is more than the weighting points in paragraphs 2.1.1 and 2.1.2, that enterprise will only receive the weighting points.

**2 MEASUREMENT OF ECONOMIC INTEREST**

The calculation of the ownership indicators provided for in paragraphs 2.2.1, 2.2.2 and 2.2.3 is as follows:

$$A = B/C \times D$$

Where

**A** is the recognisable percentage of a black participant's claim to economic interest in the measured entity.

**B** is the percentage of economic interest, which participants who fall within the category of black people in that measured entity hold to all economic interest which all participants of that measured entity hold

Where equity equivalents are utilised the equity equivalents shall be deemed to hold economic interest that rank equally with ordinary shareholder economic interest and 50% of the deemed economic interest shall be deemed to be in favour of black women and 50% shall be deemed to be in favour of designated groups.

**C** is the percentage compliance target for economic interest for the applicable measured ownership indicator in paragraphs 2.2.1, 2.2.2 and 2.2.3.

**D** is the weighting points allocated to the applicable measured ownership indicator in paragraphs 2.2.1, 2.2.2 and 2.2.3.

If an enterprise gains a score in the formula above that is more than the weighting points in paragraphs 2.2.1, 2.2.2 and 2.2.3, that enterprise will only receive the weighting points.

### 3 CALCULATION OF DEEMED NET VALUE

In calculating the 'Deemed Net Value' referred to in paragraph 4 below, the following formula applies:

$$A = (B - C)/D$$

Where

**A** is the Deemed Net Value

**B** for the purposes of paragraph 4 below is the value of the Equity Instruments relevant to the calculation, determined on the measurement date

**C** for the purposes of paragraph 4 below is the carrying value of any acquisition debts of the relevant Black participants on the measurement date

**D** for the purposes of paragraph 4 below is the value of the measurable Portion (Value of South African Operations) of the measured entity on the measurement date

### 4 NET VALUE

The "Net Value" points in paragraph 2.3 are the lower result of Formula A and Formula B as follows:

#### Formula A

$$A = B \times (1 / (25\% \times C)) \times 3$$

Where

**A** is the score in paragraph 2.3

**B** is the Deemed Net Value for all black participants in the measured entity determined using Formula 3 above

**C** is the time-based graduation factor of the economic Interest compliance target outlined below:

- a. 10% for the first year after the current equity interest date.
- b. 20% for the second year after the current equity interest date.
- c. 40% from the first day of the third year after the current equity interest date to the last day of the fourth year after the current equity interest date.
- d. 60% from the first day of the fifth year after the current equity interest date to the last day of the sixth year after the current equity interest date.
- e. 80% from the first day of the seventh year after the current equity interest date to the last day of the eighth year after the current equity interest date.
- f. 100% from the first day of the ninth year after the current equity interest date to the last day of the tenth year after the current equity interest date.

**Formula B**

$$A = B/C \times 3$$

Where

**A** is the score in paragraph 2.3

**B** is the percentage economic Interest in the measured entity of black participants

**C** is the target for the ownership indicator in paragraph 2.3

If a measured entity gains a score in paragraph 4.1 that is more than the weighting points in paragraph 2.3, that entity will only receive the weighting points.

## 5 CALCULATION OF THE RECOGNITION OF OWNERSHIP AFTER THE SALE OF SHARES BY BLACK PARTICIPANTS:

The calculations referred to in paragraphs 3.9.3 of Code 100, Statement 100, use the following formula:

For paragraphs 2.1.1 and 2.2.1 of the ownership scorecard

$$A=B \times C \times D$$

Where

**A** is the percentage of rights of ownership that survive the sale of an Equity Instrument by a black participant in paragraphs 3.9.3

**B** is the percentage of rights of ownership for each of the indicators in the ownership scorecard that were attributable to the black participant immediately before his/her sale.

**C** The net value realised or created for black participants after the liquidation of debt as a % of the value of the sale of shares of each of the indicators immediately prior to exit.

The net value created for black participants is equal to the current value of the shares less any own contribution made by the black participants at the inception date of the transaction.

**D** is the most recently determined B-BBEE recognition level of the measured entity (which must be less than one year old) based on its Generic Scorecard result for all elements other than ownership determined using statement 000.

For paragraphs 2.1.2, 2.2.2 and 2.2.3, A is equal to the percentage held by black women or designated groups immediately before their sale of shares, multiplied by the result the calculation done in terms of paragraph 5 of Annexe 100(C) for par 2.1.1 and 2.2.1 of the ownership scorecard.

For paragraph 2.3 of the ownership scorecard, calculating the net value that survives after the sale of shares the following calculation shall apply:



**A = B X C X D**

Where

**A** is the percentage of rights of ownership that survive the sale of an equity instrument by a black participant in paragraphs 3.9.3

**B** is the percentage of the equity instruments diluted, determined on the date of measurement immediately before his/her sale

**C** is the value of the equity interests sold (less) the value of any own contribution made at the inception date of the deal in relation to the shares sold (less) the carrying value of any acquisition debts of the relevant black participants on the date of sale or loss divided by the value of the measured entity at the date of sale or loss

**D** is the recognition level of the measured entity excluding ownership immediately prior to the loss or sale.

**Illustrative example**

Assume that a B-BBEE consortium holds 10% of a measured entity at 01/01/2009, the commencement date; 50% of this holding is attributable to black women and 50% is attributable to black designated groups.

At the commencement date, the value of this holding is R150 (enterprise value R1 500) and the value of the associated debt is R100.

The B-BBEE Consortium provided R10 own cash contribution and R90 was debt funded in lieu of the purchase price of R100 for 10%. Through corporate action this holding is diluted fully at 31/12/2012.

At this date, the value of the holding has grown to R180 and the debt is R80. The value of the business is therefore R1 800.

The measured entity is a level 3 contributor excluding ownership as at 31/12/2012.

Calculation for paragraphs 2.1.1 and 2.1.3 of the ownership scorecard:

$$A = B \times C \times D$$

$$B = 10\%$$

$$C = ((180-80-10)/180) = 50\%$$

R180 is the value of the shares sold, R80 is the debt outstanding and R10 is the value of the consortium's own contribution at the inception of the transaction.

$$D = 110\%$$

The continued recognition in paragraphs 2.1.1 and 2.1.3 of the scorecard will be:

$$10\% \times 50\% \times 110\% = 5.5\%$$

The continued recognition in paragraphs 2.1.2, 2.2.2 and 2.2.3 of the scorecard will be:

$$50\% \times 5.5\% = 2.75\%$$

Calculation for paragraph 2.3 of the ownership scorecard:

$$A = B \times C \times D$$

$$B = 10\%$$

$$C = (180 - 80 - 10) / 1800 = 5\%$$

$$D = 110\%$$

The continued recognition in paragraph 2.3 is therefore  $10\% \times 5\% \times 110\% = 0.55\%$ .

**AMENDED CODE SERIES FS100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT**

**STATEMENT 102: RECOGNITION OF THE SALE OF ASSETS, EQUITY INSTRUMENTS AND BUSINESS**

Issued under section 9 (1) of the Broad-Based Black Economic Empowerment Act of  
2003 as amended by Act 46 of 2013

**Arrangement of Statement FS102**

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**1. OBJECTIVES OF STATEMENT 102**

The objectives of this statement are to:

- 1.1 Set out the conditions where the sale of assets, equity instruments and other businesses will be recognised.
- 1.2 Set out how the ownership points will be determined.

**2. APPLICATION**

- 2.1 A transaction in terms of this statement may involve the sale of:
  - 2.1.1 An asset;
  - 2.1.2 A business; or
  - 2.1.3 Equity instruments in an enterprise.

**3. KEY MEASUREMENT PRINCIPLES**

3.1 General principles:

- 3.1.1 A seller that has concluded a transaction involving a sale of assets, equity instrument or business with an associated enterprise may claim the benefits provided for in this statement in its own ownership scorecard.
- 3.1.2 Where a seller has claimed benefit in terms of the ownership scorecard for the sale of asset, equity instrument or business it may not claim benefits, *for the same transaction*, in the enterprise and supplier development element.

3.2 Qualification Criteria:

3.2.1 For ownership points to be recognised the transaction:

- a. Must result in the creation of sustainable businesses or business opportunities for black people; and
- b. Result in the transfer of specialised skills or productive capacity to black people.

3.2.2 A sale of asset, equity Instrument and business must involve a separate associated enterprise, which has:

- a. No unreasonable limitations (generally accepted arm's length limitations may be imposed and may include but not be limited to limitations such as normal arm's length restraints of trade limitations) as to its clients or customers;
- b. Clients, customers or suppliers other than the seller; and
- c. B-BBEE shareholders or their successors if the BEE shareholding is the same or has improved the holding asset for a minimum of three years.

3.2.3 Any operational outsourcing arrangements between the seller and the associated enterprise must be negotiated at arms-length on a fair and reasonable basis.

3.2.4 The transaction should be subject to an independent valuation by an independent expert.

3.2.5 The following transactions do not constitute qualifying transactions:

- a. Transfers of business rights by way of license, lease or other similar legal arrangements not conferring unrestricted ownership; and
- b. Sales of franchises by franchisors to franchisees, but includes sales of franchises from franchisees to other or new franchisees.

- 3.2.6 No Qualifying transaction may be claimed as BEE ownership if a repurchase transaction is entered into within a three year period after the transaction implementation, even if the transaction implementation is deferred post the three years.
- 3.2.7 Ownership points are subject to existing contracts between the parties remaining in effect on market related terms, subject to market norm service levels.

#### 4. MEASUREMENT PRINCIPLES

- 4.1 The calculation of the ownership points in terms of paragraph 2 of the ownership scorecard must be based on:
- 4.1.1 The value of the transaction;
- 4.1.2 The value of equity Instruments held by black participants in the associated enterprise; and
- 4.1.3 The carrying value of the acquisition debt of black participants in the associated enterprise.
- 4.2 All calculations in paragraphs 4.1.1 to 4.1.3 must use a standard valuation method.
- 4.3 Equivalency percentages in this statement apply to all paragraphs of the ownership scorecard.
- 4.4 The seller must include the equivalency percentages in its own ownership scorecard as if those percentages arose from black ownership of equity Instruments in the seller. The equivalency percentages for the indicators in paragraphs 2.1 and 2.2 of the ownership scorecard can be calculated in terms of Annexe 102(A).

#### 5. RECOGNITION OF SALE OF ASSET, EQUITY INSTRUMENTS AND BUSINESSES

- 5.1 A seller seeking recognition of a transaction in its ownership scorecard must determine that recognition in paragraph 4 in compliance with paragraph 2.3 of statement 000:
- 5.1.1 For the first three years after the transaction, based on data current on the measurement date;
- 5.1.2 For each year thereafter, based on:
- The Indicator percentages at the measurement date; and
  - The values of the qualifying transaction and benefit to the seller at the measurement date in the third year after the transaction.

#### ANNEXE 102(A)

This formula determines the equivalency percentages in paragraphs 2.1 to 2.2 of Table 2a of the ownership scorecard.

$$A = B/C \times D$$

Where

**A** is the Equivalency percentage

**B** is the value of the qualifying transaction to the associated enterprise determined using a standard valuation method

**C** is the value of the seller determined using a standard valuation method

**D** is the indicator percentages of the associated enterprise

**AMENDED CODE SERIES FS 100: THE MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK  
ECONOMIC EMPOWERMENT  
STATEMENT FS103: THE RECOGNITION OF EQUITY EQUIVALENTS**

Issued under section 9 (1) of the Broad-Based Black Economic Empowerment Act of  
2003 as amended by Act 46 of 2013

**Arrangement of Statement FS103**

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**1. OBJECTIVES OF STATEMENT FS103**

The objectives of this statement are to:

- 1.1 Define the means by which measured entities may recognise equity equivalent programmes; and
- 1.2 Specify how contributing towards the ownership element of B-BBEE by entities applying equity equivalents is measurable.

**2. KEY MEASUREMENT PRINCIPLES**

- 2.1. Any equity equivalent contributions towards the ownership element of B-BBEE made by an entity recognising equity equivalents are measurable against the value of their operations in the Republic of South Africa.
- 2.2. Equity equivalent contributions may take the form of, but are not limited to, additional Black Business Growth Funding, access to financial services, targeted investments, enterprise development, and other elements. These additional contributions may only be counted in either equity equivalents or the respective element, not in both.
- 2.3. Where an equity equivalent contribution may qualify in, for example, the empowerment financing element, it must only be included in either empowerment financing or ownership.
- 2.4. Further, any equity equivalent contribution may only be counted as an equity equivalent contribution in its entirety in either ownership or the elements scorecard. Measured entities may not split a contribution and attribute part of that contribution to ownership and part of the contribution to a specific element.
- 2.5. The target for equity equivalents shall be the Rand value of 5% for local entities or 25% for foreign branches of the entity measured using a standard valuation as at 31 December 2010.
- 2.6. Local measured entities seeking to utilise equity equivalent contributions may only utilise these contributions for a maximum of 5% of the measured entity (calculated as a percentage of South African operations of that entity at 31 December 2010) with respect to its ownership target of 15% direct ownership.
- 2.7. Lending types of equity equivalent contributions will be recognised as follows:
  - 2.7.1 The origination amounts shall be recognised in paragraphs 2.1 to 2.2 of the ownership scorecard:
    - a. For the purpose of paragraph 2.1.1 of the ownership scorecard equity equivalent contributions shall be deemed to hold voting rights;
    - b. For the purpose of paragraph 2.1.2 of the ownership scorecard 50% of the voting rights recognised in paragraph 2.1.1 shall be deemed to be held by black women;
    - c. For the purpose of paragraph 2.2.1 of the ownership scorecard equity equivalent contributions shall be deemed to hold economic Interest;
    - d. For the purpose of paragraph 2.2.2 of the ownership scorecard, 50% of the economic interest recognised in paragraph 2.2.1 shall be deemed to be held by black women; and
    - e. For the purpose of paragraph 2.2.3 of the ownership scorecard, 50% of the economic interest recognised in paragraph 2.2.1 shall be deemed to be held by black designated groups.
  - 2.7.2 Only the balance sheet exposure as at measurement date shall be recognised in paragraph 2.3 of the ownership scorecard.

### 3. RECOGNITION OF EQUITY EQUIVALENT PROGRAMMES

- 3.1 The Minister of Trade and Industry may approve certain equity equivalent programmes after the entity applying for recognition of equity equivalents has consulted with the Minister of Finance about its equity equivalent proposal and the Minister of Finance has forwarded a recommendation to the Minister of Trade & Industry.
- 3.2 Notwithstanding 3.1, any equity equivalent programme forming part of this Amended FSC constitutes an approved programme. Specifically, the equity equivalent programmes described in paragraph 8 constitute approved programmes and no further approvals are necessary.
- 3.3 Equity equivalent programmes are preferably sector specific, but the Minister of Finance may consider requests for approval of programmes that are not sector specific.
- 3.4 Equity equivalent programmes
- 3.4.1 Equity equivalent programmes may involve:
- 3.4.1.1 Programmes that support:
- a. The National Development Plan;
  - b. The National Skills Development Strategy III;
  - c. The National Treasury policy priorities referred to in the document "A Safer Financial Sector to Serve South Africa better";
  - d. The New Growth Path; and
  - e. The Jobs Fund.
- 3.4.1.2 Enterprise creation in co-operatives that are:
- a. At least 51% owned by black people; or
  - b. More than 30% owned by black women; or
  - c. At least 51% owned by members of black designated groups.
- 3.4.1.3 Any other programmes that promote socio-economic advancement or contribute to the overall social development of the Republic of South Africa.
- 3.4.2 Equity equivalent programmes must include:
- 3.4.2.1 A full description of programme objectives and projected outcomes;
- 3.4.2.2 Qualification criteria for participation in the programme;
- 3.4.2.3 Timelines for implementation and delivery with milestones against which progress is measurable; and
- 3.4.2.4 Details about the sponsors of the programme.
- 3.5 Equity equivalent programmes are not limited to multinational corporations that are subject to a global policy or local branches of foreign banks, but are available to all measured entities in the sector, subject to the limitation on local entities in paragraph 2.3 above.
- 3.6 Equity equivalent programmes may have any of the following as their beneficiaries:
- 3.6.1 Enterprises in which:
- a. Black people hold at least 51% of the exercisable voting rights and at least 51% of the economic interest;
  - b. Black women hold more than 30% of the exercisable voting rights and more than 30% of the economic interest;
- and

- c. Black designated groups hold at least 51% of the exercisable voting rights and at least 51% of the economic interest.

#### **4. MEASUREMENT OF EQUITY EQUIVALENT CONTRIBUTIONS ON THE OWNERSHIP SCORECARD**

- 4.1 The ownership score of a measured entity participating in an equity equivalent programme is calculated in terms of paragraph 4.3. A foreign multinational corporation (including foreign branches of international banks) participating in an equity equivalent programme cannot receive any points for ownership in any statement in Code Series 100 other than this statement. Local banks or domestic multinationals may only utilise equity equivalents to a maximum of 5% of their measurable portion and may therefore receive points for ownership in any statement in Code series 100.
- 4.2 Contributions to equity equivalent programmes are measured at Rand value of contributions made using the general principles set out in paragraph 8 of this Statement 103 and code series FS500, FS600 and FS700. Certain general principles defined in paragraph 8 may be the same as certain general principles in code series FS500, FS600 and FS700 against the following target:
  - 4.2.1 25% of the value of the South African operations of the foreign multinational subject to a global policy or branch of a foreign bank qualifying for the recognition of equity equivalents. The 25% value is determined by using a standard valuation and calculated at 31 December 2010; or
  - 4.2.2 A maximum of 5% of the Rand value of the South African operations for local measured entities calculated at 31 December 2010.
- 4.3 The ownership score in an equity equivalent programme using the target in paragraph 4.2 must be calculated in terms of Annexe 103(A) using the principles defined in paragraphs 2.1 to 2.7 of this Statement 103.

#### **5. EXAMPLES OF EQUITY EQUIVALENT PROGRAMMES**

- 5.1 Enterprise creation:
  - 5.1.1 If the equity equivalent contribution of the entity involves the creation of a new enterprise:
    - a. The creation of the new enterprise must comply with the requirements for a qualifying transaction as defined in Statement 102 of the CoGP; and
    - b. The creation of the new enterprise cannot contribute to the entity's score in code series FS600.
- 5.2 Investment in social advancement:
  - 5.2.1 An equity equivalent contribution of the entity applying for recognition of equity equivalents that involves enhanced socio-economic development.
    - a. Must comply fully with code series FS500; and
    - b. Cannot form part of the score of the entity applying for recognition of equity equivalents in code series FS500.
- 5.3 Empowerment Financing:
  - 5.3.1 An equity equivalent contribution of the entity applying for recognition of equity equivalents that involves enhanced empowerment financing.
    - a. Must comply fully with code series FS600; and



- b. Cannot form part of the score of the entity applying for recognition of equity equivalents in code series FS600.
- 5.4 Investment in Access to Financial Services:
- 5.4.1 An equity equivalent contribution of the entity applying for recognition of equity equivalents that involves enhanced Access to Financial Services:
- a. Must comply fully with code series FS700; and
  - b. Cannot form part of the score of the entity applying for recognition of equity equivalents in code series FS700.

## **6. SPECIFIC RULES ON ENTITIES APPLYING FOR RECOGNITION OF EQUITY EQUIVALENTS**

- 6.1 Any contributions towards the ownership element of B-BBEE made by entities applying for recognition of equity equivalents are measurable against the value of their operations in the Republic of South Africa.
- 6.2 In calculating their ownership score, entities applying for recognition of equity equivalents must apply the exclusion principle to any portion of the business value of their South African operations gained from non-South African sources. A standard valuation method must be used to determine the value of the South African operations.
- 6.3 In calculating their ownership score, entities applying for recognition of equity equivalents may recognise sales of equity Instruments in non-South African enterprises to black people, on the following basis:
- 6.3.1 The non-South African enterprise must form part of the chain of ownership between the entities applying for recognition of equity equivalents and its eventual holding company;
  - 6.3.2 The transaction must comply with South African exchange control requirements;
  - 6.3.3 The percentage of the value of the equity Instruments sold to the value of the business of the entity applying for recognition of equity equivalents represents the recognisable lack claim to economic Interest;
  - 6.3.4 The percentage of exercisable voting rights ceded to the buyers of the equity Instruments in the business of the entity applying for recognition of equity equivalents represents the recognisable black right to exercisable voting rights; and
  - 6.3.5 The rights of ownership in the equity Instruments are comparable to rights that would have accrued had the equity Instrument been in the business of the entity applying for recognition of equity equivalents.

## **7. SPECIFIC RULES ON MULTINATIONALS**

- 7.1 Bonus points for multinationals:
- 7.1.1 Multinationals are not restricted to equity equivalent programmes in the financial sector. However, in order to qualify for the bonus point in paragraph 2.2 of Table 2b of the ownership scorecard, the 25% direct ownership target must be achieved via equity equivalent programmes within the financial sector.

## **8. EMPOWERMENT FINANCING AND ACCESS TO FINANCIAL SERVICES EQUITY EQUIVALENT PROGRAMMES**

- 8.1 Measured entities must register every programme, other than paragraph 8 programmes, that constitutes a part of empowerment financing and access to financial services equity equivalent programmes with the Council at the commencement of the programme:

- 8.1.1. The registration will include details of the B-BBEE status of the recipient where relevant, a description of the transaction in the context of code series FS400, FS500 and/or FS600 and the Rand value of the equity equivalent and term over which it is claimed.
- 8.1.2. The transaction cannot form part of the score of the entity in terms of code series FS400, FS500 and/or FS600 and/or FS700.
- 8.1.3. Contributions to equity equivalent programmes that are the same in nature to contributions contemplated in code series FS400, FS500 and/or FS600 and/or FS700 and have already been claimed in code series FS400, FS500, FS600 and/or FS700 may not be claimed in paragraph 2 of code FS100, Statement 100. No double counting of the same contribution will be allowed in ownership and any other element.
- 8.2. Measurement principles:
- 8.2.1. Equity Equivalent Contributions will be recognised as follows:
- a. The target for equity equivalents shall be the Rand value of 5% or 25% of the value of the South African operations of the entity measured using a standard valuation as at 31 December 2010.
  - b. The origination amounts shall be recognised in paragraphs 2.1.1 to 2.2.3 of the ownership scorecard:
    - i. For the purpose of paragraph 2.1.1 of the ownership scorecard, equity equivalent contributions shall be deemed to hold voting rights.
    - ii. For the purpose of paragraph 2.1.2 of the ownership scorecard, 50% of the voting rights recognised in paragraph 2.1.1 shall be deemed to be held by black women.
    - iii. For the purpose of paragraph 2.2.1 of the ownership scorecard, equity equivalent contributions shall be deemed to hold economic interest.
    - iv. For the purpose of paragraph 2.2.2 of the ownership scorecard, 50% of the economic Interest recognised in paragraph 2.2.1 shall be deemed to be held by black women.
    - v. For the purpose of paragraph 2.2.3 of the ownership scorecard, 50% of the economic Interest recognised in paragraph 2.2.1 shall be deemed to be held by black designated groups.
  - c. Only the balance sheet exposure as at measurement date shall be recognised in paragraph 2.3 of the ownership scorecard.

**ANNEXE 103(A)**

This formula is for determining the ownership score in an equity equivalent programme using either of the targets in paragraphs 4.2.1 or 4.2.2.

**For foreign branches:**

$$A = B/C \times 14$$

Where

**A** is ownership points of the entity in any year arising from its equity equivalent contribution

**B** is the balance sheet value of contributions made as at measurement date

**C** is the target of 25% of the standard value of its South African operations as at 31 December 2010

**For local measured entities:**

$$A = (B/C \times 2) + [(B \times 50\%) / D \times 0.67] + [(B \times 50\%) / E \times 0.33] + (F/G \times 1.33)$$

Where

**A** is ownership points of the measured entity in any year arising from its equity equivalent contribution

**B** is the origination value of contributions made

**C** is the target of 5% (15%/3) of the standard value of its South African operations as at 31 December 2008 – relating to Paragraphs 2.1.1 and 2.2.1 of the ownership scorecard

**D** is the target of 2% (6%/3) of the standard value of its South African operations as at 31 December 2008 relating to paragraphs 2.1.2 and 2.2.2 of the ownership scorecard

**E** is the target of 3.33% (10%/3) of the standard value of its South African operations as at 31 December 2008 - relating to paragraph 2.2.3 of the ownership scorecard

**F** is the balance sheet value of contributions made as at measurement date

**G** is the target as per Formula A and Formula B

This formula for determining the ownership score in an equity equivalent programme, using either of the targets in paragraphs 4.2.1 and 4.2.2, where the contribution is made on an annual basis towards a 10 year target is as follows:

$$A = B/C \times (1/ (5\% \text{ or } 25\% \times D) \times 13 \text{ or } 4.33)$$

Where

**A** is ownership points of the measured entity in any year arising from its equity equivalent contribution

**B** is the value of total contributions made prior to the measurement date

**C** is the financial value of the target in paragraph 4.2.1 or 4.2.2 or the ten year value of contributions to be made over the life of this statement

D is the time-based graduation factor detailed below:

10%	for the first year after the commencement of Statement 000.
20%	for the second year after the commencement of Statement 000.
40%	from the first day of the third year after the commencement date of Statement 000 to the last day at the end of the fourth year after the commencement date of Statement 000.
60%	from the first day of the fifth year after the commencement date of Statement 000 to the last day at the end of the sixth year after the commencement date of Statement 000.
80%	from the first day of the seventh year after the commencement date of Statement 000 to the last day at the end of the eighth year after the commencement date of Statement 000.
100%	from the first day of the ninth year after the commencement date of Statement 000 to the last day at the end of the tenth year after the commencement date of Statement 000.