

**BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT SECTION 9 (1) CODES OF GOOD PRACTICE AS AMENDED****SCHEDULE 2****INTERPRETATION AND DEFINITIONS****Part 1: Interpretation**

The FSC must be interpreted according to the following provisions unless the context requires a different meaning:

1. In interpreting the provisions of the FSC any reasonable interpretation consistent with the objectives of the Act and the B-BBEE Strategy in Section 11 of the Act must take precedence.
2. Words importing persons shall where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisation having legal capacity.
3. The schedules and annexes to the FSC are an integral part of the FSC and a reference to the FSC includes a reference to the schedules.

**Part 2: Definitions**

In this FSC unless the context otherwise requires:

<b>Absorbed / Absorption</b>	Absorbed / Absorption means: <ol style="list-style-type: none"> <li>a. a measure of the measured entity's ability to have successfully secured formal permanent or long-term contract employment for the learner or to assist the learners to proceed with post-school education and training.</li> <li>b. where the learner was already employed by the measured entity when s/he commenced the learnership and merely continues with his/her existing Employment after the learnership, it will not qualify as Absorption. However, if the learner is moved into another position and their previous employment is thereby rendered vacant to be occupied by someone, then this can be counted as absorption.</li> </ol>
<b>Acquisition debt</b>	Acquisition debt means the debts of: <ol style="list-style-type: none"> <li>b. black participants incurred in financing their purchase of their equity instruments in the measured entity; and</li> <li>c. juristic persons or trusts found in the chain of ownership between the eventual black participants and the measured entity for the same purpose as those in (a).</li> <li>c. debt that substitutes or replaces the debt in (a) and (b) above is still acquisition debt notwithstanding the fact that it may be owed to a different financier.</li> </ol>
<b>Act</b>	Broad-Based Black Economic Empowerment Act 53 of 2003 or the Skills Development Levies Act of 1999 (whichever is applicable)
<b>B-BBEE strategy</b>	B-BBEE strategy as contemplated in section 11 of the Act.
<b>B-BBEE verification professional</b>	a body appointed by the Minister for the accreditation of rating agencies or the authorisation of B-BBEE verification professionals.
<b>Benefit factor</b>	means a factor specified in the benefit factor matrix applicable to fixing the monetary value of enterprise development and supplier development and socio-economic development contributions claimable in Statement 400 and 500.

<b>Benefit Factor Matrix</b>	means the benefit factor matrix for enterprise development and supplier development and socio-economic development contributions claimable in Statement 400 and 500
<b>Black designated groups</b>	unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; black people who are youth as defined in the National Youth Commission Act of 1996; black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities in the Employment Equity Act; black people living in rural and underdeveloped areas; black military veterans as defined in the Military Veterans Act 18 of 2011;
<b>Black new entrants</b>	means black participants who hold rights of ownership in a measured entity and who, before holding equity instruments in in the measured entity, did not hold equity in other entities which have a total value of more than R50 million measured using a standard valuation method.
<b>Black people</b>	means African, Coloured, and Indian people who: <ul style="list-style-type: none"> <li>a. are citizens of the Republic of South Africa by birth or decent; or</li> <li>b. became citizens of the Republic of South Africa by naturalisation- <ul style="list-style-type: none"> <li>(i) Before 27 April 1994; or</li> <li>(ii) On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to the date.</li> </ul> </li> </ul>
<b>Black stockbrokers and black fund managers</b>	means a juristic person (including a trust), having shareholding or similar members interest, in which black participants enjoy a right to exercisable voting rights that is at least 51% of the total such rights measured using the flow-through principle and has a turnover below R100 million.
<b>Broad-Based Ownership Scheme</b>	an ownership scheme that complies with the rules set out in Annexe 100B, such a scheme will be counted as direct ownership
<b>Codes</b>	Codes of Good Practice including all statements as issued in section 9 of the Act.
<b>Direct Ownership</b>	Direct ownership refers to all forms of BEE ownership other than through mandated investment
<b>Employment Equity Act</b>	Employment Equity Act No. 55 of 1998.
<b>Employment Equity Act Regulations</b>	regulations in the Employment Equity Act.
<b>Elements</b>	measurable quantitative or qualitative elements of B-BBEE compliance in the generic scorecard and the Codes of Good Practice.
<b>Employed learner</b>	a learner who was employed by the employer who is party to the learnership agreement concerned when the agreement was concluded, in terms of section 18(1) of the Skills Development Act. The learner's contract of employment is therefore not affected by the agreement.
<b>Employee with a disability</b>	As defined in the Code of Good Practice on Key Aspects of Disability in the Workplace issued in section 54 of the Employment Equity Act; aligned with the Employment Equity Act.
<b>Employee</b>	as defined in the Employment Equity Act.
<b>Employee Share Ownership Programme</b>	a worker or employee scheme as per Annexe100(C).
<b>Enterprise Development contributions</b>	monetary or non-monetary contributions as per Statement 400, read together with Annexe 400(B), carried out for the benefit of any entity, with the objective of contributing to the development, sustainability and financial and operational independence of that entity.
<b>Entity</b>	a legal entity or a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa.

<b>Entrepreneur</b>	a person who starts and/or operates a business which includes identifying opportunities in the market, taking risks with a view to being rewarded with profits.
<b>Equity Equivalent contribution</b>	Equity equivalent means contributions permissible under Code Series FS100 and FS103.
<b>Equity Equivalent investment</b>	a public programme or scheme of any programme national, provincial or local government department in the Republic of South Africa, or any other programme approved by the Minister as an equity equivalent investment programme. Equity equivalents are also programmes as defined in Codes FS100 and FS103.
<b>Equity instrument</b>	the instrument by which a participant holds rights of ownership in an entity.
<b>Equivalency percentage</b>	a percentage ownership performance for all the indicators in the associated Enterprise's ownership scorecard arising from a qualifying transaction included in the ownership scorecard of the beneficiary entity.
<b>Exclusion principle</b>	a measurement principle used to calculate points for the various indicators of the ownership scorecard. It allows for the exclusion of a number of rights of ownership, namely voting rights and economic interest, from the total of such rights issued by the measured entity, before determining the rights of ownership held by black participants, as a percentage of all ownership rights. Code 100 and its statements allow for the exclusion of four categories of rights of ownership: <ul style="list-style-type: none"> <li>a. those held by organs of state and public entities;</li> <li>b. those held as mandated investments;</li> <li>c. those held by non-profit companies or public benefit organisations;</li> <li>d. those that equate to the value of the foreign operations of a multinational business operating in South Africa or a South African multinational business (see paragraphs 6.1 and 6.2, Statement 103)</li> </ul> The exclusions of ownership held through the entities in (a) to (c) above is to be effected before any exclusion in terms of (d) is to be applied.
<b>Executive directors</b>	member of a board who is an executive director as defined in the King III Report
<b>Exempted micro enterprise</b>	an entity with a total annual revenue of up to R10 million.
<b>Exercisable voting rights</b>	a voting right of a participant that is not subject to any limit.
<b>Generic scorecard</b>	the balanced B-BBEE scorecard as contained in Statement 000.
<b>Global policy</b>	a globally and uniformly applied restriction, regulation or directive, whether technical or commercial, imposed on a foreign-owned financial institution by the parent company or on any financial institution by a regulator
<b>Grant contribution</b>	the monetary value of qualifying contributions made by the measured entity to a beneficiary in the form of grants, donations, discounts and other similar quantifiable benefits which are not recoverable by the measured entity.
<b>Group structure</b>	an ownership arrangement whereby one or more measured entities that are juristic persons are subsidiaries or affiliates of another measured entity that would qualify as a holding company or an affiliate.
<b>Higher education institution</b>	a higher education institution as defined in the Higher Education Act of 1997.
<b>Indicator percentage</b>	the percentage compliance of the associated entity for all the indicators of the associated enterprises ownership Scorecard. The calculation of indicator percentages follows the rules in Statement 100 using the percentage compliance for each indicator and not the resulting scores.
<b>Industry specific initiatives</b>	the qualifying contributions that are unique to the industry in which the enterprises operate. For the purposes of the Amended FSC an industry may be grouped in major divisions in

	accordance with the standard industrial classification coding system used by Statistics South Africa.
<b>Internship</b>	an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work.
<b>Intermediated black professional service provider</b>	Intermediated black professional service providers are companies that are: <ul style="list-style-type: none"> <li>a. at least 51% Black Owned</li> <li>b. offers intermediary and / or professional services to companies that operate in the financial sector</li> </ul> Examples are: <ul style="list-style-type: none"> <li>(i) Placement agents - an intermediary who supports in the fundraising process for investment funds / fund managers/ private equity funds</li> <li>(ii) Legal firms</li> <li>(iii) Value-add consultants - an intermediary that provides non-financial support for the growth of the investment fund's portfolio companies</li> <li>(iv) Corporate financiers</li> <li>(v) Chartered Accountants</li> <li>(vi) Financial intermediary</li> </ul>
<b>Junior management</b>	an employee of the measured entity who is a member of the occupational category of junior management as determined using the Employment Equity Act Regulations.
<b>Learnership</b>	a work-based route to a qualification. It is a workplace education and training programme comprising both structured practical workplace (on-the-job) experience and structured theoretical training.
<b>Learning programme</b>	any learning programme set out in the learning programme matrix.
<b>Learning programme</b>	means the learning programme matrix in Annexe 300A in Statement 300.
<b>Leviable amount</b>	mean as defined in the Skills Development Levies Act as determined using the Fourth Schedule to the Income Tax Act.
<b>Management fees</b>	means the total economic interest received by a Broad-Based Ownership Scheme or black participants in any year, less the amounts distributed or applied to beneficiaries and the amounts reserved for the future distribution or application.
<b>Mandated investment</b>	means any investments made by or through any third party regulated by South African legislation on behalf of the owner of the funds, pursuant to a mandate given by the owner to a third party, which mandate is governed by that legislation. Some examples of domestic mandated investments, and the portions of those investments subject to the exclusion principle, are contained in Annexe 100A attached to Statement 100.
<b>Measured entity</b>	means an entity as well as an organ of state or public entity subject to measurement in the Amended FSC.
<b>Measurement period</b>	means the financial period of the measured entity, subject to the following: <ul style="list-style-type: none"> <li>a. The financial period of a measured entity is a period of 12 consecutive calendar months;</li> <li>b. Where the measured entity amends its financial reporting period, the financial period may, for the year in question, be more or less than 12 consecutive months. In such exceptional cases the measured entity may at its discretion elect to be measured for the amended financial period or the 12 months ending on the last day of the amended financial period. For purposes of determining its classification as an EME, QSFI or generic enterprise, the measured entity must, do so with reference to the 12 months ending on the last day of the amended financial period;</li> <li>c. Measured entities for which verification is required may not be measured for a measurement period that has ended more than 12 months prior to the commencement of the verification thereof;</li> </ul>

	<p>d. For EMEs and QSFI's that are allowed to submit only an affidavit, the measurement period must be the 12 consecutive calendar months that immediately precede the last day of the most recently completed financial period.</p> <p>The measurement period is the period during which the 'Skills Development', 'Enterprise and Supplier Development' and 'Socio economic Development' elements must be measured.</p>
<b>Measurement date</b>	<p>the last day of the measurement period or such later date agreed upon with the measured entity that is as close as practically possible to the commencement of the verification or to the date of the affidavit, whichever the case may be.</p> <p>The term 'date of measurement' has a corresponding meaning.</p> <p>The ownership and management control elements must be measured on the measurement date. These two elements may not be measured on different dates.</p>
<b>51% black owned</b>	<p>an entity in which:</p> <ol style="list-style-type: none"> <li>black people hold at least 51% of the exercisable voting rights as determined in Code series 100;</li> <li>Black people hold at least 51% of the economic Interest as determined in Code series 100; and</li> <li>(c) Has earned all the points for net value in statement 100.</li> </ol>
<b>100% black owned</b>	<p>an entity in which:</p> <ol style="list-style-type: none"> <li>black people hold 100% of the exercisable Voting Rights as determined in indicator 2.1.1 of Code series 100;</li> <li>black people hold at least 100% of the economic interest as determined in indicator 2.2.1 of Code series 100; and</li> <li>has earned all the points for net value in statement 100.</li> </ol>
<b>51% black women owned</b>	<p>means an entity in which:</p> <ol style="list-style-type: none"> <li>black women hold at least 51% of the exercisable voting rights as determined in Code series 100;</li> <li>black women hold at least 51% of the economic interest as determined in Code series 100; and</li> <li>has earned all the points for net value in Statement 100.</li> </ol>
<b>30% black women owned</b>	<p>an entity in which:</p> <ol style="list-style-type: none"> <li>black women hold more than 30%, but less than 51%, of the exercisable voting rights determined in Code series 100;</li> <li>black women hold more than 30%, but less than 51% of the economic interest as determined in Code series 100; and</li> <li>has earned all the points for net value in Statement 100.</li> </ol>
<b>Middle management</b>	<p>an employee of the measured entity who is a member of the occupational category of middle management as determined using the Employment Equity Regulations.</p>
<b>Multinational business</b>	<p>a measured entity with a business in the Republic of South African and elsewhere which maintains its international headquarters outside the Republic. The term 'South African multinational' has a similar meaning except that it has its international headquarters inside the Republic.</p>
<b>National Skills Development Strategy</b>	<p>the National Skills Development Strategy referred to in section 5(1) (a) (ii) of the Skills Development Act.</p>
<b>Net Profit after Tax</b>	<p>the operating profit of a measured entity after tax. It incorporates both the equity/loss figures and abnormal items, but excluded extra ordinary items as determined by the International Financial Reporting Standard (<i>IFRIS</i>) as amended from time to time. For calculation purposes in this Code, it refers to the previous year's NPAT.</p>

<b>Net Profit before Tax</b>	the operating profit of a measured entity before tax. It incorporated both the equity/loss figures and abnormal items, but excluded extra ordinary items as determined the International Financial Reporting Standard (IFRS) as amended from time to time.
<b>Net value</b>	the points resulting from the application of paragraph 4 of Annexe 100 (E) of statement 100.
<b>New enterprise</b>	an early stage business which is similar to a start-up. However, an early stage business is typically three years old or less.
<b>New job</b>	A new job is a new position created by the Enterprise or Supplier Development Beneficiary to employ an additional person in the beneficiary to perform specified work over a specified period of time (or into perpetuity). The new job must be an additional position created within the beneficiary entity.
<b>Non-profit company</b>	a non-profit company as defined by the Companies Act. The term also includes Section 21 companies and companies limited by guarantee as described in the previous Companies Act.
<b>Non-profit organisation</b>	a non-profit organisation registered in the Non-Profit Organisation Act of 1997.
<b>Organ of state</b>	as defined in the Preferential Procurement Policy Framework Act 5 of 2000.
<b>Outsourced labour expenditure</b>	means any expenditure incurred in: <ul style="list-style-type: none"> <li>a. procuring the services of or from a labour broker; and</li> <li>b. procuring the services of any person who received any remuneration or to whom any remuneration accrues because of services rendered by such person to or on behalf of a labour broker.</li> </ul>
<b>Participant</b>	a natural person holding rights of ownership in a measure entity.
<b>Pivotal report</b>	a report on 'Professional, Vocational, Technical and Academic Learning' programmes that meet the critical needs for economic growth and social development, generally combining course work at universities, universities of technology and colleges with structured learning at work.
<b>Priority skills</b>	<ul style="list-style-type: none"> <li>a. core, critical and scarce skills as well as any skills specifically identified in:</li> <li>b. a Sector Skills Plan issued by the Department of Higher Education and Training of the Republic of South Africa;</li> <li>c. the National Skills Development Strategy III;</li> <li>d. the New Growth Path; and</li> <li>e. the National Development Plan.</li> </ul>
<b>Private equity fund</b>	a third-party fund through which investments are made on behalf of the actual owner of the funds pursuant to a mandate given by that person to the private equity fund.
<b>Public benefit organisation</b>	an entity as defined in section 30 of the Income Tax Act of 1962.
<b>Public entity</b>	has the meaning assigned to it in the Public Finance Management Act (Act 1 of 1999).
<b>Public Finance Management Act</b>	the Public Financial Management Act (PFMA) (Act 1 of 1999).
<b>Qualifying Enterprise and Supplier Development Contributions</b>	a collective term describing enterprise development and supplier development contributions targeting EMEs, QSEs and QSFI which are at least 51% black owned or at least 51% black women owned.
<b>Qualifying Small Financial Institution</b>	an entity that qualifies for measurement in the Qualifying Small Financial Institution (QSFI) scorecard with total annual revenue of more than R10m but less than R50m.
<b>QSFI Scorecard</b>	means the QSFI scorecard referred to in statement 000.
<b>Qualifying Socio-Economic contributions</b>	a collective term for Socio-Economic Project Contributions and Socio-Economic Development contributions.
<b>Qualifying transaction</b>	a sale of business, valuable business assets or shares that results in the creation of specialised skills or productive capacity to black people.
<b>Related enterprise</b>	an entity controlled by a measured entity whether directly or indirect control over that measured entity or the immediate family of those natural persons

<b>Reporting</b>	has the meaning ascribed to it in the International Financial Reporting Standard ( <i>IFRIS, International Accounting Standard 18</i> ) as amended from time to time.
<b>Rights</b>	a collective term for the right of economic interest and the right to exercisable voting rights.
<b>Scarce skills</b>	those skills identified as being scarce by any SETA.
<b>Sector specific</b>	a code in series which is applicable to a particular sector.
<b>Seller</b>	the entity or the person concluding a qualifying transaction with the associated enterprise.
<b>Senior management</b>	an employee of the measured entity who is a member of the occupational category of senior management as determined using the Employment Equity Regulations.
<b>Skills Development Act</b>	the Skills Development Act of 1998.
<b>Skills Development Levies Act</b>	the Skills Development Levies Act of 1999.
<b>Skills development</b>	comprises the legitimate training expenses that a measured entity incurs on skills development. It excludes the skills development levy payable by the measured entity in the Skills Development Levies Act.
<b>Socio-Economic Development</b>	monetary or non-monetary contributions <ul style="list-style-type: none"> <li>a. implemented for communities, natural persons or groups of natural persons, where at least 75% of the beneficiaries are black people.</li> <li>b. The specific objective of SED is the facilitating of income generating activities for targeted beneficiaries or are in terms of paragraph 3.3. of Code 500.</li> <li>c. Socio-economic development contributions commonly take the following forms: <ul style="list-style-type: none"> <li>i. Development programmes for women, youth, people with disabilities, people living in rural areas;</li> <li>ii. Support of healthcare and HIV/AIDS programmes;</li> <li>iii. Support for education programmes, resources and materials at early childhood development, primary, secondary and tertiary education level, as well as bursaries and scholarships;</li> <li>iv. Community training skills development for unemployed people and adult basic education and training; or</li> <li>v. Support of arts, cultural or sporting development programmes.</li> </ul> </li> </ul>
<b>Socio-economic project</b>	monetary or non-monetary contributions carried out for the benefit of any projects approved for this purpose by any organ of state or sectors including without limitation: <ul style="list-style-type: none"> <li>a. Projects focusing on environmental conservation, awareness, education and waste management;</li> <li>b. Projects targeting infrastructural development or reconstruction in underdeveloped areas; rural communities or geographical areas identified in the government's integrated sustainable rural development or urban renewal programmes; and</li> <li>c. New projects promoting beneficiation.</li> </ul>
<b>Standard valuation method</b>	a standard valuation method for an asset, an economic interest, or any other instrument or right relevant to measurement in Code 100, using normal valuation methods that represent standard market practice.
<b>Start-up enterprise</b>	a recently formed or incorporated entity that has been in operation for less than one year. An entity that was formed and incorporated some time ago but which has not been operating, will qualify as a Start-up Enterprise for the first year after it re-commences operations. A start-up enterprise does not include any newly constituted enterprise which is merely a continuation of a pre-existing enterprise.

<b>Strategy</b>	the document titled South Africa's Economic Transformation – A Strategy for Broad-Based Black Economic Empowerment published by the Department of Trade and Industry in March 2003 as amended or substituted in section 11 of the Act.
<b>Subsidiary</b>	has a meaning defined in section 1(3) of the Companies Act.
<b>Suitable evidence or documentation</b>	<p>means, notwithstanding any provisions to the contrary in the Verification Manual (Government Gazette 31255, dated 18 July 2008) as amended from time to time, evidence or documentation that includes, without limiting the generality of the term:</p> <ol style="list-style-type: none"> <li>a. representations by the measured entity regarding its B-BBEE status that can be substantiated in various ways. These include by audited or reviewed financial statements; an independent competent person's report; other third-party confirmation; or where appropriate, having regard to available evidence and in the absence of third party confirmation, a representation by management of the measured entity attesting to the facts. <ol style="list-style-type: none"> <li>i. a verification professional considering the aforementioned evidence or documentation in support of any representation, must apply professional judgement in evaluating the appropriateness thereof; and</li> <li>ii. cannot absolve itself of the responsibility to conduct a thorough verification by relying only on this type of evidence or documentation if evidence required by the Verification Manual, is readily available.</li> <li>iii. In evaluating the appropriateness of evidence, it must be able to justify and substantiate to the Council any conclusion it reaches.</li> </ol> </li> <li>b. In the case of a 51% or 100% black owned EME and a 51% or 100% black owned QSFI, an affidavit attesting to its B-BBEE status. This is the minimum level of evidence required for these entities.</li> <li>c. In the case of Broad-Based Ownership Schemes, ESOPs and trusts, verification professionals may rely on interviews with fiduciaries, preferably independent fiduciaries, of the schemes, instead of individual participants in these schemes, to achieve a reasonable level of comfort with regard to the rights of ownership that flow through them.</li> </ol>
<b>Supplier</b>	any supplier or service provider to a measured entity if any portion of the supply or service provision falls within the definition of total measured procurement spend.
<b>Supplier development contributions</b>	monetary or non-monetary contributions as per Statement 400 read together with Annex 400(B) carried out for the benefit of Empowering Suppliers who are suppliers of the Measured entity, with the objective of contributing to the development, sustainability and financial and operational independence of those Empowering Suppliers.
<b>Target</b>	the targets for the various elements in the Generic and QSFI scorecard.
<b>Third party rights</b>	<p>third party legal or commercial rights that restrict withhold or defer any benefit associated with ownership of any equity instrument. Third party rights include only those rights:</p> <ol style="list-style-type: none"> <li>a. Created against a black participant to secure, for a lender, repayment of a loan advanced to that participant for financing their purchase of their equity instrument in the measured entity;</li> <li>b. Held against a juristic person or trust that is in the chain of ownership between the measured entity and that the eventual black participant serving the same purpose mentioned in (a) above.</li> </ol>
<b>Total labour cost</b>	the total amount of remuneration paid by an entity to its employees determined using section 3(4) of the Skills Development Levies Act and the Forth Scheduled of the Income Tax Act of 1962.
<b>Transformation charters</b>	the sectoral transformation charters referred to in section 12 of the Act.

<b>Unemployed learner</b>	a learner who was not in the employment of the employer party to the learnership, apprenticeship or internship concerned when the learnership, apprenticeship or internship commenced. The employer and learner must therefore enter into a contract of employment. The employer is not necessarily the measured entity (refer to the Skills Development Act).
<b>Unincorporated joint venture</b>	a joint venture between two or more measured entities effected by agreement without incorporation.
<b>Voting right</b>	a voting right attaching to an equity instrument owned by or held for a participant measured using the flow-through principle or the control principle.
<b>Weighting</b>	the weightings applied to various elements in the generic scorecard and QSFI scorecard.