

**STATEMENT 020:
BEE ADVISORY COUNCIL**

Abstract

This statement outlines the composition of the BEE Advisory Council (Council). The membership qualifications criteria, selection process and disqualification criteria are also outlined. The function and powers of the Council are described as well as the administrative function of the Council.

The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.

To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.

BEE ADVISORY COUNCIL

CONTENTS

Paragraphs

INTRODUCTION.....	
<i>Background to BEE Advisory Council</i>	01
<i>Purpose of the Codes Good Practice</i>	02
OBJECTIVES OF STATEMENT.....	03
DEFINITIONS	04
COMPOSITION OF THE COUNCIL	05
MEMBERSHIP OF THE COUNCIL.....	06-09
QUALIFICATION FOR MEMBERSHIP OF THE COUNCIL	10
APPOINTMENT PROCEDURE FOR MEMBERS OF COUNCIL	11 - 13
TERMINATION OF MEMBERSHIP	14 - 16
REMOVAL FROM OFFICE.....	17
FUNCTIONS OF THE COUNCIL	18 - 19
MEETINGS	20 - 21
<i>Quorum and decisions</i>	22 - 23
<i>Rules of procedure</i>	24
<i>Conflicts of interest</i>	25
ADMINISTRATION AND FINANCES.....	26 - 28
REPORTING	29

Introduction

Background to the Black Economic Empowerment Advisory Council

1. *The Black Economic Empowerment Advisory Council (Council) is established as a key mechanism of providing guidance and overall monitoring on the state of BEE in the entire economy.*

Purpose of the Codes of Practice

2. *The purpose of the Codes of Practice is to assist both the public and private sectors in their implementation of the objectives of the Broad-based Black Economic Empowerment (Broad-Based BEE) Act. The Codes of Good Practice provide principles and guidelines that would be used to accelerate broad-based BEE in a meaningful and sustainable manner. This Statement is aimed at highlighting the role and functions of the Council.*

Objective of this Statement

3. *The objectives of this Statement are to:*
 - a) *outline the Council membership qualification criteria, selection process and disqualification criteria,*
 - b) *delineate the powers and duties of the Council, and*
 - c) *outline the administration of the Council.*

Definitions

4. *The following terms are used in this Statement with the meanings specified below:*
 - the Act:** *The Broad-Based Black Economic Empowerment Act 2003, (Act no.53 of 2003).*
 - Council:** *the Black Economic Council Advisory Council established by section 4 of the Act.*
 - Minister:** *The Minister of Trade and Industry.*

Composition of the Council

5. *The Council consists of the following members, as outlined in the Act:*
 - a) *the President, who is the chairperson of the Council,*
 - b) *the Minister, with the Minister's Director General as an alternate,*
 - c) *three other Cabinet Ministers appointed by the President, with their respective Director-Generals as their alternates,*
 - d) *no fewer than 10 and no more than 15 other members appointed by the President.*

Membership of the Council

6. *The President and Cabinet Ministers on the Council are members by virtue of their respective public offices and will cease to be members if they no longer hold that office, for any reason.*
7. *The following key criteria will be applied by the President when appointing members of the Council, as outlined in the Act (section 6(2)):*
 - a) *the candidate should have appropriate expertise, and/or*
 - b) *represent different relevant constituencies including trade unions, business, community-based organisations and academics.*
8. *The President will appoint members of Council as envisaged by section 6(1)(d) of the Act and will keep their post for a period of three years.*
9. *A Council member appointed in terms of paragraph 13, will be eligible for re-appointment when his/her term of office expires.*

Qualification for membership of the Council

10. *A person may not be appointed or continue as a member of the Council if that person*
 - a) *is an un-rehabilitated insolvent;*
 - b) *has at any time been removed from an office of trust on account of misconduct;*
 - c) *is, in any other respect, not fit to be a member.*

Procedure for the appointment of certain members of Council

11. *Whenever it is necessary to appoint a member of the Council envisaged in section 6(1)(d) of the Act, the secretariat of the Council shall:*

- a) invite nominations for appointment as such a member,*
- b) compile a list of the names of all persons nominated, setting out the particulars of each individual nominee, and*
- c) submit the list to the President.*

12. *Any nomination made in terms of paragraph 11 must be supported by:*

- a) the personal details of the nominee,*
- b) details of the nominee's qualifications and experience,*
- c) a motivation as to why the nominee should be appointed to the Council, and*
- d) a signed statement by the nominee that he/she qualifies to be a member as set out in paragraphs 7 - 10 and is willing to be considered for appointment as a Council member.*

13. *The President must decide how many members to appoint in terms of section 6(1)(d) of the Act, and must make these appointments from the list submitted in terms of paragraph 11. If the list is inadequate, the President may appoint any suitable person of his choosing.*

Termination of membership

14. *Council members, who are also cabinet members, are appointed for as long as they remain cabinet members or until the President decides to appoint a different cabinet minister in their place.*

15. *A member of the Council appointed in terms of section 6(1)(d) of the Act, ceases to be a member when that person:*

- a) resigns,*
- b) is no longer eligible to be a member in terms of paragraph 10, or*
- c) is removed from office in terms of paragraph 17.*

16. *A member who resigns must give at least one month's written notice to the President, although the President may accept a shorter period in a specific case.*

Removal from office

17. *The President may remove from the Council, a member appointed in terms of section 6(1)(d) of the Act if:*

- a) the member is absent from two consecutive meetings of the Council without the prior permission of the Council or the President, except on good cause shown, or*
- b) the President, after consulting with the Council, is of the view that the person is no longer a fit to be a member of the Council.*

Functions of the Council

18. *The functions of the Council, as set out in section 5 of the Act are to:*

- a) advise government on BEE,*
- b) review progress in achieving BEE,*
- c) advise on draft Codes of Good Practice which the Minister intends publishing for comment in terms of section 9(5) of the Act,*
- d) advise on the development, amendment or replacement of the strategy referred to in section 11 of the Act,*
- e) if requested to do so, advise on draft transformation charters, and*
- f) facilitate partnerships between organs of state and the private sector that will advance the objectives of this Act.*

19. *The Council has all the powers necessary to enable it to fulfill its functions as set out in section 5 of the Act, including the power to:*

- a) conduct research or commission research to be conducted,*
- b) request information from organs of state or private bodies,*
- c) publish reports on BEE,*
- d) establish sub-committees to deal with specific matters as and when required,*

- e) *co-opt experts to serve on, or advise, sub-committees, and*
- f) *oversee the functions of the different sector Charter Councils, established through the sector transformation charters.*

Meetings

20. *The Council must meet at least once a quarter.*

21. *The Chairperson of the Council decides when and where the Council will meet, but a majority of the Council may request, in writing, that the Chairperson convene a meeting at the time and place set out in the request.*

Quorums and decisions

22. *A majority of the members of the Council and the Chairperson or his/her representative shall constitute a quorum for a meeting of the Council.*

23. *The Council will endeavour to reach consensus in its decision-making. Where this is not possible, a decision of the Council will be made by a majority of members present and voting at a meeting. If there is an equality of votes, the Chairperson of the meeting will have a casting vote in addition to that person's vote as a member.*

Rules of procedure

24. *The Council may determine its own procedures subject to the Act, the Constitution and sound corporate governance principles.*

Conflict of interests

25. *If a Council member has a personal or financial interest in any matter being discussed by the Council, the member must disclose that interest and withdraw from the Council when that matter is discussed.*

Administration and finances

26. *The Department of Trade and Industry, after consultation with the Council, must draw up a budget for the Council.*
27. *There will be a Council secretariat made up of members of staff of the Department of Trade and Industry.*
28. *The secretariat is accountable to the Minister of Trade and Industry and must –*
- a) keep full and proper records of all income and expenditure of the Council;*
 - b) prepare financial statements reflecting the income and expenditure of the Council and submit these to the Council within three months of the end of the financial year;*
 - c) keep accurate minutes of all Council meetings and circulate these to Council members;*
 - d) make all the necessary logistical arrangements for Council meetings and*
 - e) carry out any other task assigned to the secretariat by the Minister of Trade and Industry, after consultation with the Council.*

Reporting

29. *The Council must submit an annual report to Parliament. The report must, at least, specify the following:*
- a) The state of broad-based BEE in the economy using the broad-based BEE scorecard;*
 - b) The enablers and obstacles to the effective implementation of broad-based BEE and*
 - c) Any other issues that have an impact on broad-based BEE.*