

**STATEMENT 040:
GLOSSARY**

Abstract

This statement provides a glossary for the terms and definitions used in the Codes of Good Practice.

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.

Introduction

01. *This statement provides a glossary of all relevant black economic empowerment terms and definitions applicable to the Codes of Good Practice.*

Glossary

02. *“**The Act**” refers to the Broad-Based Black Economic Empowerment Act 2003, (Act no.53 of 2003).*
03. *“**Accredited BEE Rating Agencies**” are enterprises that have been accredited by SANAS on behalf of **the dti**, who meet the minimum technical and black economic empowerment criteria for rating agencies. The main role of the BEE rating agencies is to provide an independent opinion on the broad-based black economic empowerment status of enterprises. An accredited BEE rating agency must have the capacity to evaluate, verify and confirm the BEE status of enterprises using the broad-based BEE scorecard as presented in Statement 000. An accredited BEE rating agency cannot issue an opinion on an enterprise with which it has a conflict of interest.*
04. *“**BEE Scorecard**” a scorecard for the measurement of broad-based black economic empowerment for a particular Enterprise as set forth in terms of statement 000 of the Code of Good Practice issued under the Act.*
05. *“**Beneficially Owned or Beneficially Interested**” in relation to a share or like instrument, shall include, without limitation, the right to receive dividends and capital distributions in respect of, and exercise the votes attached to, that share or like instrument.*
06. *“**Black Economic Empowerment (BEE)**” is as defined in the Strategy for Broad-Based Black Economic Empowerment. It is defined as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people*

that manage, own and control the country's economy, as well as significant decreases in income inequalities.

07. **“Black people”** is as defined in the Broad-based Black Economic Empowerment Act no. 53 of 2003, save that it is limited to South African citizens. In terms of the implementation of the Codes of Good Practice, the term is further defined as Africans, Coloureds and Indians who are South African citizens. For avoidance of doubt, this term does not include juristic persons or any form of Enterprise other than a sole proprietor. With regard to this definition, **“black women”** means black people who are women and **“black designated groups”** means black people who are also workers, youth, people with disabilities or people living in rural areas.
08. **“Broad-Based BEE Status”** is measured as per the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. It is referred to as the BEE progress or status of an economic entity, and the different preferential categories include:
- a) **Excellent contributor to broad-based BEE** - total score of 80% and above
 - b) **Good contributor to broad-based BEE** - total score of 65% to 79.9%
 - c) **Satisfactory contributor to broad-based BEE** - total score of 40% to 64.9%
 - d) **Limited contributor to broad-based BEE** - total score of below 40%
10. **“Broad-based Black Economic Empowerment (Broad-Based BEE)”** is defined in the Broad-based Black Economic Empowerment Act no.53 of 2003. The Act defines it as the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:
- a) increasing the number of black people that manage, own and control enterprises and productive assets,
 - b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises,
 - c) human resource and skills development,
 - d) achieving equitable representation in all occupational categories and levels in the workforce,

- e) *preferential procurement and*
- f) *investment in enterprises that are owned or managed by black people.*

11. **“Broad-based Benefit Scheme”** means a scheme whereby a trust; a company, as constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association representing a broad base of beneficiaries (such as a community or a broad-based group of natural persons including, without limitation, women, workers and/or employees, youth, the disabled and people living in rural areas); participates in the equity of an enterprise on behalf of targeted beneficiaries for their benefit (whether direct or indirect). This definition shall not include a trust or a voluntary association where same is used for purely commercial reasons unrelated to community or broad-based benefit. For the avoidance of doubt, any employee share scheme or similar scheme which is constituted using a trust; a company constituted in terms of section 21 of the Companies Act 61 of 1973; a non profit organisation or a voluntary association; is deemed to be a broad-based benefit scheme.

12. **“The Codes of Good Practice”** refer to the Codes of Good Practice as contemplated by section 9 of the Act.

13. **“Council”** means the Black Economic Advisory Council established by section 4 of the Act.

14. **“Defined Benefit Funds”** is defined in the Pensions Fund Act no. 24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise is obliged to provide the agreed benefits to current and former employees.

15. **“Defined Contribution Funds”** is defined in the Pensions Fund Act no.24 of 1956 (as amended). The Act defines such post-employment benefit plans as plans under which an enterprise and an employee pay fixed contributions into a separate entity or a fund and have no legal or constructive obligation to pay further contributions if the

fund does not hold sufficient assets to pay all employee benefits relating to employee service in the current or prior periods.

16. **“dti”** Department of Trade and Industry

17. **“Economic interest”** means a member's entitlement to receive any payment from an enterprise which arises by virtue of the member's holding an equity interest. Any entitlement of a member to receive any payment consequent to the winding up of an enterprise is expressly included within the definition of economic interest. A member's entitlement to any payment arising on any other basis shall not be deemed to be economic interest unless such entitlement is without a commercial rationale or is intended to circumvent the objectives of the Act. Terms and concepts analogous to economic interest include, but are not limited to:

- a) a shareholder's entitlement to dividends of a company limited by shareholding or a co-operative society,
- b) a partner's entitlement to share in the distributions of a partnership, and
- c) a beneficiary's entitlement to share in the distributions of a trading trust.

18. **“Enterprise”** the person(s) conducting a business, trade or profession in the Republic of South Africa which is recognised in terms of the laws of the Republic of South Africa, whether or not such an enterprise is incorporated.

19. **“Equity interest”** in relation to a member, means that portion of the equity which the individual members of an enterprise have as claims against the enterprise or against the other members of that enterprise, as the case may be, expressed as a percentage of the total equity in that enterprise. Analogous terms and concepts include, but are not limited to:

- a) shares in a company, or similar instruments conferring a right in respect of a company,
- b) limited by shareholding or in a co-operative society,

- c) *members' interests in a close corporation,*
- d) *a partnership interest in a partnership, and*
- e) *a beneficiary share in a trading trust*

20. **“Equity”** *in relation to any form of enterprise, means the capital invested in that enterprise in respect of which the members have a claim against the enterprise or against the other members of that enterprise. Equity does not include any amounts advanced by a member to an enterprise on loan, provided that, in certain circumstances referenced below, the settlement of a loan may be deemed an economic interest, in which case, and for that limited purpose, equity may include such a loan. Analogous terms and concepts include, but are not limited to:*

- a) *issued share capital in a company limited by shareholding or in a co-operative society,*
- b) *the total of members' interests in a close corporation,*
- c) *the total interest of all of the partners in a partnership, and*
- d) *the total capital value of a trading trust or of a sole proprietorship.*

21. **“Fair Market Value”** *shall mean a valuation of an equity interest in an enterprise, determined by a suitably qualified person using the methodology set out in statement AC133 of the Generally Accepted Accounting Practice applicable in the Republic of South Africa, as amended or substituted from time to time.*

22. **“Flow Through Principle”** *refers to the principle applied when determining the entitlement of Black people, Black women and Black designated groups to exercise Voting Rights in or to share in Economic Interest of an Enterprise, regard is had solely to Voting Rights and/or Economic Interest to which Black people, Black women and Black designated groups (as the case may be) who are natural persons are entitled. To the extent that an entitlement to Voting Rights and/or Economic Interest is held by juristic persons, regard will be had to Voting Rights and/or Economic Interest to which Black*

people, Black women and Black designated groups (as the case may be) who are natural persons are entitled in that juristic person. The same principle will apply throughout the chain of ownership by juristic persons until such time as that chain terminates in the entitlement of a natural person who is a Black person, Black women and Black designated groups (as the case may be) to such Voting Rights and/or Economic Interest.

23. **“Fronting”** is defined as any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries. The claims can be in the form of direct ownership, human resource development and indirect ownership components as per the balanced scorecard.

24. **“Governing Body”** a conceptual body whose representatives’ main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of the enterprise.

25. **“Indirect Ownership Scheme”** in this statement, means any scheme whereby (a) person(s) own(s) an equity interest in an enterprise on behalf of third party beneficiaries and where there is no direct and participative exercise of voting rights by such third party beneficiaries. An indirect ownership scheme includes, without limitation, a broad-based benefit scheme as well as post-employment benefit plans, insurance funds, mutual funds, private equity funds and similar lawful collective investment schemes.

26. **“Limited contributor to broad-based BEE”** is measured as per the broad-based BEE scorecard in the BEE Codes of Good Practice or in a Gazetted industry charter. It is measured as a total score of below 40%.

27. **“Member”** (in relation to any form of enterprise), is defined as a person having an equity interest in the equity of that enterprise. Analogous terms and concepts include, but are not limited to:

- a) a shareholder of a company limited by shareholding or in a co-operative society,
- b) a member of a close corporation,
- c) a partner in a partnership,
- d) a beneficiary in a trading trust, and
- e) the sole proprietor in a sole proprietorship.

28. **“Minister”** is as defined in the Broad Based Black Economic Empowerment Act no.53 of 2003, as the Minister of Trade and Industry.

29. **“Narrow-based BEE status (categories of BEE enterprises)”** refers to the categorisation of companies and economic entities by their ownership and management status. These include but are not limited to:

- a) **“black enterprise”** defined in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, as a company or economic entity that is 50,1% owned by black persons and where there is substantial management control by black people. Ownership refers to economic interest, whilst management refers to the membership of any board or similar governing body of the enterprise.
- b) **“black empowered enterprise”** is, in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, defined as one that is at least 25,1% owned by black persons and where there is substantial management control by black people.
- c) **“black engendered enterprise” (black women owned enterprise)** is one with at least 25,1% representation by black women within the black equity and management portion.
- d) **“community or broad-based enterprise”**, in terms of Appendix B to the Strategy Document for Broad-Based Black Economic Empowerment, has an empowerment shareholder who represents a broad base of members.

30. **“Organ of state”** is defined in the Broad Based Black Economic Empowerment Act no. 53 of 2003. The Act refers to the definition in the Public Finance Management Act no. 1 of 1999 (PFMA). It is defined as a national or provincial department; a municipality as contemplated in the Constitution; Parliament; a provincial legislature; constitutional institutions listed in Schedule 1 of the PFMA, as well as the major and other public entities listed in Schedule 2 and 3 of the PFMA.

31. **“Ownership Targets”** means the targeted percentages of the total economic interests and voting rights to which members who are black people are entitled, as calculated in terms of statement 100. In terms of Statement 100 issued as a Code of Good Practice under the Act, the ownership target for BEE scorecards completed in compliance with that statement is 25% in respect of economic interest and 25% plus one vote, in respect of voting rights. Other Codes of Good Practice may specify different ownership targets for their own purposes.

32. **“Rights Limitation”** in this statement means a pledge of equity interest by a member pursuant to the acquisition by that member of that equity interest as well as any other legal and/or commercial mechanism implemented in relation to an acquisition of an equity interest to which voting rights and/or economic interests attach, and which is designed to:

- a) reserve to any other person other than the member, the benefits of that equity interest or of the voting right and/or economic interest attached to that equity interest for whatsoever purpose, whether generally or specifically, or for a fixed period, or until, or upon, the occurrence of some event; or
- b) withhold, defer or restrict, in any manner, the exercise of a voting right and/or receipt of economic interest by a member for whatsoever purpose, whether generally or specifically, or for a fixed period, or until or upon the occurrence of some event.

For the avoidance of doubt, a common "put" or "call" option granted by members to other members of the same enterprise, will not constitute a rights limitation unless the exercise price of the "call" or "put" option is less than fair market value.

33. **"The Strategy"** refers to the Broad-based Black Economic Empowerment Strategy published by the Department of Trade and Industry under section 11 of the Act.

34. **"Superannuation Scheme"** means a "provident fund", a "pension fund" and a "retirement annuity fund" as defined in Schedule 2 of Income Tax Act 58 of 1962.

35. **"Unrestricted"** The term "Unrestricted" used in relation to Voting Rights or Economic Interest means that such Voting Rights and/or Economic Interest (as the case may be) are not subject to a Restriction. For the avoidance of doubt, any lawful arrangement whereby a Member agrees, in writing, to a limitation upon their right to alienate any portion of the Equity Interest owned by them for a fixed period of time shall not constitute a Restriction.

36. **"Voting Right"** (in relation to a member) is the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as a percentage of the votes to which that member is entitled, over the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:

- a) the percentage of votes held by a shareholder of a company or a co-operative,
- b) society at a meeting of the shareholders,
- c) the percentage of votes held by a member of a close corporation at a meeting of the members, and
- d) the percentage of votes held by a partner at a partnership meeting.

37. **Weighting:** the percentage of a BEE scorecard allocated to the measurement of a particular element of Broad-based BEE such as ownership, management, employment equity, etc