

**STATEMENT 100:
THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT**

Abstract

This statement deals with the role of equity ownership in broad-based economic empowerment and with the recognition and measurement criteria of the black ownership of enterprises. One of the objectives of the Broad-Based Black Economic Empowerment Bill is increasing the number of black people that manage, own and control enterprises and productive assets. The objective of this statement is to provide recognition and measurement criteria of the black ownership of enterprises.

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

**THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT**

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1 Introduction

- 1.1 *This statement deals with the role of equity ownership in broad-based black economic empowerment and with the recognition and measurement criteria for the ownership of enterprises by black people.*

2 Objective and Scope

- 2.1 *The objective of this statement is to provide recognition and measurement criteria of the black ownership of enterprises.*

- 2.2 *This statement should be applied in the recognition and measurement of black equity ownership by every organ of state and public enterprise in:*

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law,*
- (b) developing and implementing a preferential procurement policy,*
- (c) determining qualification criteria for the sale of state-owned enterprises, and*
- (d) developing criteria for entering into partnerships with the private sector.*

- 2.2 *The statement should also be applied to ensure a uniform approach to the black equity ownership aspect of broad-based BEE by: all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.*

3 Interpretation and Definitions

- 3.1 *Certain terms defined below are intended to provide a reference to a variety of defined or understood terms and concepts that are used in relation to various forms of enterprises including, but not limited to, companies governed in terms of the Companies Act 61 of 1973, close corporations governed in terms of the Close Corporations Act 69 of 1984, and co-operative societies governed in terms of the Co-Operatives Act 91 of 1981, as well as partnerships and sole proprietorships governed in terms of the common law and trading trusts as governed in terms of the Trust Property Control Act 57 of 1998 and the common law. In each such instance, a term defined herein may be accompanied by a*

reference to some of the analogous terms or concepts used in relation to the various forms of enterprise. Where such analogous terms and concepts are identified, they may be used in the interpretation of the defined term, but should under no circumstances be considered to limit the generality of the defined term, which term they accompany, nor should they be deemed to constitute an exhaustive list of analogous terms and concepts to that defined term.

- 3.2 **"Act"** means the Broad Based Black Economic Empowerment Act 53 of 2003.
- 3.3 **"BEE Scorecard"** means a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set forth in terms of a Code of Good Practice issued under the Act and specifically includes, without limitation, any BEE scorecard provided for in terms of Statement 000, issued as a Code of Good Practice in terms of Section 9(1) of the Act.
- 3.4 **"Black people"** is a term that bears the same meaning as defined in the Act, save that it is limited to South Africans who are citizens by birth or who have obtained citizenship prior to 27 April 1994. 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.
- 3.5 **"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. Economic interest specifically includes any entitlement of a member to receive any payment consequent to the winding up of an enterprise. Economic interest excludes entitlement to receive payment pursuant to the member's status as an employee within the enterprise or as a supplier to the enterprise, unless such payments are not market related, or are without commercial rationale or are intended to achieve a circumvention of the provisions of this Statement 100. Terms and concepts analogous to economic interests include, but are not limited to:
- 3.5.1 a shareholder's entitlement to payment of the dividends of a company limited by shareholding, or their entitlement to the dividends of a co-operative society,

- 3.5.2 a partner's entitlement to share in the distributions of a partnership, and
- 3.5.3 a beneficiary's entitlement to share in the distributions of a trading trust.
- 3.6 **"Enterprise"** means the person(s) conducting a business, trade or profession in the Republic of South Africa and recognised in terms of the laws of the Republic of South Africa, whether such enterprise is incorporated or not.
- 3.7 **"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. Specifically excluded from the definition of equity interest is a preference share, as contemplated in paragraph 7.13, or a similar instrument or right, or that portion of debenture, similar instrument or right that represents debt. In addition, any instrument or right that does not confer upon the holder thereof a right to participate in the economic interest of the enterprise, as at the date of measurement in terms of this Statement 100, shall not be considered to be an equity interest. Analogous terms and concepts include, but are not limited to:
- 3.7.1 shares (or similar instruments conferring a right in respect of a company), in a company limited by shareholding, or shares in a co-operative society,
- 3.7.2 members' interests in a close corporation, and
- 3.7.3 a partnership interest in a partnership.
- 3.8 **"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 by reason of holding an equity interest. Analogous terms and concepts include, but are not limited to:
- 3.8.1 issued share capital in a company limited by shareholding or share capital in a co-operative society,
- 3.8.2 the total of members' interests in a close corporation, and
- 3.8.3 the total interest of all of the partners in a partnership.
- 3.9 **"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.

- 3.10 **"Flow-through Principle"** means the principle set forth in paragraph 5.2 below.
- 3.11 **"Member"** in relation to any form of enterprise, means a person having an equity interest in the equity of that enterprise. If any person exercises any legal rights in relation to an equity interest in terms of fiduciary duties on behalf of another natural person who is a Black person and who is, by law, the member of the enterprise subject to measurement, then the person exercising the rights shall be evaluated as if he/she is a black person. Analogous terms and concepts include, but are not limited to:
- 3.11.1 shareholder of a company limited by shareholding or a shareholder of a co-operative society,
- 3.11.2 a member of a close corporation,
- 3.11.3 a partner in a partnership,
- 3.11.4 a beneficiary of a trading trust, but not any other form of trust,
- 3.11.5 a trustee in any form of trust other than a trading trust, and
- 3.11.6 the sole proprietor in a sole proprietorship.
- 3.12 **"Restriction"** in this Statement 100 shall have the meaning specified in paragraphs 6.3, 6.4, 6.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11 and 7.12. 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.
- 3.13 **"Super-annuation 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.
- 3.14 **"Voting Right"** in relation to a Member, refer to 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:

- 3.14.1 *the percentage of votes held by a shareholder of a company or a co-operative society at a meeting of the shareholders,*
- 3.14.2 *the percentage of votes held by a member of a close corporation at a meeting of the members, and*
- 3.14.3 *the percentage of votes held by a partner at a partnership meeting.*

4 Ownership Scorecard

- 4.1 *The scorecard set forth in paragraph 4.4 shall be used for the purposes of deriving a score for ownership for the purposes of any BEE scorecard governed by this Statement 100.*
- 4.2 *The scorecard set forth in paragraph 4.4 is measured out of a total of 20 points. If any BEE scorecard governed by this Statement 100, allocates a weighting other than 20 points to ownership in that BEE scorecard, the score for ownership derived using the scorecard in paragraph 4.4 and in this Statement 100, will be adjusted in accordance with the following calculation:*

$$BScore = \frac{SScore}{20} \times BWeight$$

Where:

BScore *is the score for ownership in terms of the applicable BEE scorecard*
SScore *is the score for ownership derived using the scorecard in paragraph 4.4 and this Statement 100*

BWeight *is the weighting allocated to ownership in the applicable BEE Scorecard*

- 4.3 *The calculation of each indicator must be undertaken in strict compliance with the principles set out in this Statement 100.*
- 4.4 *The following table represents the methodology used for the purposes of deriving a score for ownership for any BEE Scorecard governed by this Statement 100:*

Ownership Indicator	Weighting points	Compliance target	Measurement Principles
4.4.1 Voting Rights:			
4.4.1.1 <i>Unrestricted voting rights in the enterprise in the hands of black people</i>	3	25%+1 vote	
4.4.1.2 <i>Unrestricted voting rights in the enterprise in the hands of black women</i>	2	10%	
4.4.2 Economic Interest:			
4.4.2.1 <i>Economic interest in the enterprise to which Black people are entitled</i>	4	25%	
4.4.2.2 <i>Economic interest in the enterprise to which black women are entitled</i>	2	10%	
4.4.2.3 <i>economic interest in the enterprise to which black designated groups are entitled</i>	1	2.5%	
4.4.2.4 <i>Level of unrestricted entitlement of black people to receive their economic interest in the enterprise</i>	8	25%	
4.4.3 Bonus points:			
4.4.3.1 <i>Involvement of new entrants who are black people in the ownership of enterprises</i>	1	As specified below	
4.4.3.2 <i>Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest</i>	1	As specified below	

4.5 *It is a general principle of this Statement 100 that, where an enterprise attains a score in respect of an individual ownership indicator, as specified in paragraph 4.4, which is in excess of the corresponding weighting points, then that enterprise shall only be entitled to the corresponding weighting points.*

5 Flow Through Principle

5.1 *The measurement of the ownership indicators specified in paragraphs 4.4.1 and 4.4.2, shall take into account the flow-through principle specified in paragraph 5.2.*

- 5.2 *In determining the entitlement of black people, black women and black designated groups to exercise voting rights in an enterprise or to share in the 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. In cases where 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 a natural person who is a black person, or who represents black women or black designated groups (as the case may be). The natural black person(s) shall be entitled to such voting rights and/or economic interest.*
- 5.3 *Notwithstanding the provisions of paragraph 5.2, where a member is a fiduciary of any form of enterprise other than a trading trust, which exists for the primary purpose of benefiting 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) or a lawful collective investment scheme other than a super-annuation scheme, the flow-through principle will be applied mutatis mutandis to the actual distribution of economic interest to black persons who are beneficiaries or to whose benefit such benefit falls.*

6 Measurement of Voting Rights

- 6.1 *The ownership indicators provided for in paragraph 4.4.1.1 to 4.4.1.2 are calculated on the following basis:*

$VrS = \frac{\%Vr}{\%VrT} \times WP$
<p><i>Where</i></p> <p>VrS <i>is the score achieved for the ownership indicator being measured</i></p> <p>%Vr <i>is the percentage that unrestricted voting rights (in the hands of black people in the enterprise being measured) hold to the total of all voting rights held by members of that enterprise</i></p> <p>VrT <i>is the compliance target for voting rights in respect of the applicable ownership indicator being measured, as specified in paragraph 4.4</i></p> <p>WP <i>means the weighting points allocated to the applicable ownership</i></p>

indicator being measured as specified in paragraph 4.4

- 6.2 *The calculation in paragraph 6.1 shall be undertaken in compliance with the flow-through principle.*
- 6.3 *A voting right shall be deemed to be subject to a restriction if, pursuant to the terms of equity interest acquisition by black people or black women (as the case may be) or the financing of such acquisition, the equity interest in whole, or the voting rights attaching to that equity interest are:*
- 6.3.1 *pledged, ceded or similarly encumbered in favour of any other person, or*
- 6.3.2 *made subject to any legal and/or commercial mechanism which is designed to reserve, for any person other than the member, the benefits of that equity interest in whole, or the voting right attaching 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*
- 6.3.3 *made subject to any legal and/or commercial mechanism which is designed to withhold, defer or restrict in any manner, the exercise of that voting right by the member, for whatsoever purpose, whether generally, or specifically, or for a fixed period, or until or upon, the occurrence of some event, or*
- 6.3.4 *made subject to a restriction upon the member holding such rights to elect a number of directors reasonably proportionate to their holding, or*
- 6.3.5 *made subject to any form of option exercisable by any other person, whereby a member may be compelled to part with all or part, of his/her equity interest, or with all, or part, of his/her voting rights.*
- 6.4 *If a voting right (subject to evaluation in terms of paragraphs 4.4.1.1 to 4.4.1.2) is subject to a restriction, it shall not be taken into consideration in the calculation specified in paragraph 6.1.*
- 6.5 *In instances where a restriction has been structured in such a way as to permit the gradual release of portions of the effected voting rights from the restriction, then the released voting rights shall be recognisable for the purposes of the calculation specified in paragraph 6.1, as and when they are released.*
- 6.6 *Voting rights of a black person exercised by a natural person who is not a black person woman but who acts in a fiduciary capacity or in a representative*

capacity in terms of a specific mandate, shall be considered in the calculation referred to in paragraph 6.1. Such voting rights shall be deemed to be exercised by the holder of those rights.

7 Measurement of Economic Interest

7.1 The ownership indicators provided for in paragraphs 4.4.2.1 to 4.4.2.3 are calculated on the following basis:

$EiS = \frac{\% Ei}{\% EiT} \times WP$
<p>Where</p> <p>EiS is the score achieved for the ownership indicator being measured</p> <p>%Ei is the percentage that economic interest (to which members who fall within the category of black people in the enterprise being measured) holds to the total of all economic interest to which all members of that enterprise are entitled</p> <p>EiT is the compliance target for economic interest in respect of the applicable ownership indicator being measured, as specified in paragraph 4.4</p> <p>WP means the weighting points allocated to the applicable ownership indicator being measured, as specified in paragraph 4.4</p>

7.2 The ownership indicators provided for in paragraph 4.4.2.4 are calculated on the following basis:

$UEiS = \frac{UBEi}{\sum Ei} \times WP$
<p>Where</p> <p>UEiS is the score achieved for the ownership indicator in paragraph 4.4.2.4</p> <p>UBEi is the economic interest to which members who are black people are entitled, which is unrestricted</p> <p>ΣEi is the total of all economic interest (whether restricted or unrestricted) to which all members of the enterprise are entitled</p> <p>WP means the weighting points allocated as specified in paragraph 4.4.2.4</p>

7.3 The calculations in paragraphs 7.1 and 7.2 shall be undertaken in strict compliance with the flow-through principle.

7.4 The calculation in paragraph 7.1 shall not take into account any restrictions upon the economic interest being measured.

7.5 The calculation in paragraph 7.2 shall be undertaken with reference to the percentage entitlement to economic interest by black people in the enterprise. Where economic interest is determined by reference to a variable which is undeterminable upon the date of measurement, the percentage entitlement

shall be projected upon a fair and reasonable basis, taking into account the enterprise's historical performance.

7.6 In the calculation in paragraph 7.2, an economic interest to which members who are black people are entitled, will be deemed to be subject to a restriction if, pursuant to the terms of acquisition of equity interest by Black people or of the financing of such an acquisition, the equity interest in whole or the economic interest attaching to that equity interest is:

7.6.1 pledged, ceded or similarly encumbered in favour of any other person, or

7.6.2 made subject to any legal and/or commercial mechanism which is designed to reserve for any person other than the member, the benefits of that equity interest in whole or the economic interest attaching 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

7.6.3 made subject to any legal and/or commercial mechanism which is designed to withhold, defer or restrict in any manner, the receipt of that economic interest by the member, for whatsoever purpose, whether generally or specifically, or for a fixed period, or until, or upon, the occurrence of some event, or

7.6.4 made subject to any form of option exercisable by any other person, whereby a member may be compelled to part with all or part of his/her equity interest or with all or part of his/her economic interest, or

7.6.5 granted in terms of any form of option, exercisable by the member, upon the occurrence of some future event.

7.7 In addition to the provisions of paragraph 7.6 and in the calculation in paragraph 7.2, an economic interest to which members who are black people are entitled will be deemed to be subject to a restriction if:

7.7.1 the acquisition of the equity interest to which the economic interest attaches was financed, in whole or in part, by means of any loan (which for the purposes of this paragraph includes, but is not limited to, any financing arrangement similar or analogous to a loan) made to that black person by any other person, or

- 7.7.2 *the terms of the acquisition of the equity interest to which the economic interest attaches, includes a deferral of the obligation to make payment of the acquisition price (or part thereof) to a later date, following the date of acquisition (or any similar or analogous arrangement).*
- 7.8 *Should economic interest, subject to evaluation in terms of paragraph 4.4.2.4, be subject to a restriction, it shall not be taken into consideration in the calculation specified in paragraph 7.2.*
- 7.9 *In an instance where a restriction has been structured in such a way as to permit the gradual release of portions of the effected economic interest from the restriction, then the released economic interest shall be recognisable for the purposes of the calculation specified in paragraph 7.2, as and when they are released.*
- 7.10 *Should a restriction upon economic interest attaching to an equity interest be partial, that portion which is unrestricted shall be recognisable for the purposes of the calculation specified in paragraph 7.2.*
- 7.11 *Notwithstanding anything to the contrary contained in this paragraph 7, an enterprise subject to measurement in terms of paragraph 7.2 may recognise the following as unrestricted economic interest for the calculation in paragraph 7.2:*
- 7.11.1 *the fair market value of that equity interest upon date of measurement, less the capital value of the loan used to finance the acquisition of the equity interest. A restricted economic interest attaches to the latter upon that date, as a percentage of the fair market value of that equity interest upon that date,*
- 7.11.2 *in respect of an acquisition of an equity interest made subject to a deferral of the obligation to pay the purchase price, the total fair market value of the acquired equity interest less any instalments paid in respect of the purchase price, upon the date of measurement, expressed as a percentage of the total fair market value of the equity interest upon that date, and*
- 7.11.3 *in respect of an option as provided for in paragraph 7.6.5, a fair and reasonable valuation of that option upon the date of measurement, as a percentage of the value of the total economic interest to which black people are entitled,.*

- 7.12 *An option, as provided for in paragraph 7.6.4, shall preclude recognition of the economic interest so restricted until such time as it is released from the restriction.*
- 7.13 *In the instance of any arrangement whereby a member borrows funds from a third person and that third person is granted a preference share, or similar instrument or right, as a means to facilitate repayment of the loan, such a transaction shall be deemed to be a restriction as contemplated in 7.7.1, provided that the preferent right relates only to the economic interest.*

8 The Measurement of the Bonus Points

- 8.1 *An enterprise subject measurement shall be entitled to 1 bonus point towards its score for ownership, under the ownership scorecard provided for in paragraph 4.1, if it can demonstrate that a new black entrant(s) has acquired an entitlement to voting rights and economic interest in that enterprise. For the purposes of this paragraph 8.1, a "new black entrant" shall be any black person(s) who acquires voting rights and economic interest in the enterprise that is in excess of 5% of the total entitlement of all members of that enterprise to economic interest and voting rights where the acquiring new entrant has not prior to said acquisition become so entitled to voting rights and economic interest in any other enterprise which voting right and economic interest have fair market which value exceeds R 20,000,000.00.*
- 8.2 *Provided that the enterprise subject to measurement has scored in excess of 14 points in terms of the ownership scorecard in paragraph 4.4, that enterprise shall be entitled to 0.5 bonus points towards its score for ownership, under the ownership scorecard provided for in paragraph 4.1, if it can demonstrate that it has exceeded its target in respect of any one of the ownership indicators specified in paragraphs 4.4.2.1, 4.4.2.2 or 4.4.2.3, by more than 50% of that target. Furthermore, the enterprise shall be entitled to a further 0.5 bonus points if it can demonstrate that it has exceeded its target in respect of any one of the ownership indicators specified in paragraphs 4.4.2.1, 4.4.2.2 or 4.4.2.3, by more than 100% of that target.*

9 Special Provisions Relating to Organs of State, Public Entities and Superannuation Schemes

- 9.1 *In calculating the level of ownership by black people in enterprises in which organs of state, public entities or superannuation schemes (whether public or private sector based) are also members, all voting rights and economic interest to which those organs of state, public entities (as defined in the South African Constitution Act 108 of 1996 and the Public Finance Management Act 1 of 1999) or Super-annuation Schemes are entitled, shall be excluded (both at numerator and denominator level) from all calculations contemplated in this Statement 100, up to the lower of 25% and a level equivalent to the percentage of economic interest (whether restricted or unrestricted) of black people in that enterprise. In this regard:*
- 9.1.1 *Should such organs of state, public entities and super-annuation schemes hold in excess of the amount allowed as exclusion, that excess shall be treated as a non-black investment.*
- 9.1.2 *Should the percentage of economic interest (whether restricted or unrestricted) of black people in that enterprise exceed the level of investment of such organs of state, public entities and super-annuation schemes, only that level of investment will be allowed as an exclusion.*
- 9.2 *In an instance where an enterprise is more than 75% owned by organs of state or public entities (even though those organs of state or public entities may also be super-annuation schemes), then such an enterprise will not be subject to measurement in terms of this Statement 100.*

10 Non circumvention

- 10.1 *The fundamental principle of measurement with respect to the ownership of enterprises by Black people, is that substance must always take precedence over form. As such, any structures created or implemented with the intent to misrepresent the true status of ownership by Black people with a false and/or favourable status, if identified, will result in the loss of the right to rely upon any structures and/or members disclosed as part of such misrepresentation, in any future measurement of black ownership of that enterprise. Rating agencies and other persons performing ratings who are recognised in terms of the Act, are required to maintain a common database of such structures. Notwithstanding*

the foregoing, a bona fide error in calculation never submitted to such a rating agency for evaluation, shall not constitute a violation of this paragraph.

- 10.2 *All representations as to the entitlement to voting rights and/or economic interests by black people, must be capable of being evidenced by means of the submission of the appropriate documentation. Such documentation may include instruments evidencing the holding of an equity interest, agreements between members relating to voting rights and economic interests, and certificates issued by the enterprise's professional advisors. Failure to provide evidence of any such representation if required to do so, will result in the loss of any measurement percentage score associated with the un-evidenced representation.*
- 10.3 *Any person assessing a BEE scorecard should ensure that enterprises completing such a BEE scorecard are provided with reasonable assistance in ensuring that the principles of this statement are adhered to.*

**EXPLANATORY NOTES TO STATEMENT 100:
THE ROLE OF EQUITY OWNERSHIP IN BROAD-BASED ECONOMIC
EMPOWERMENT**

1. *Objective:*

Statement 100 establishes recognition and measurement criteria for ownership of enterprises by black people.

2. *Scope:*

- *The statement intends to cover all companies, close corporations, co-operatives, partnerships and trading trusts.*
- *The statement also enables other applicable BEE scorecards or instruments to adopt the recognition and measurement criteria contained in this statement through a conversion formula (See example 1).*
- *Beneficiaries under Statement 100:*
 - *“Black people” is defined as per the Broad-based BEE Act (which includes Africans, Coloureds and Indians) but is limited to South African Citizens by birth or a person who obtained citizenship prior to 1994.*
 - *“Black women” is specifically defined.*
 - *“Black designated groups” mean black people who are also workers, youth, people with disabilities or people living in rural areas.*

3. *Determination of Ownership Score:*

The ownership factor accounts for 20 points (out of a total of 100 points) in the broad-based BEE scorecard published by the dti. This statement determines the number of points achieved by each enterprise out of the 20 ownership points.

In order to achieve different black ownership objectives within the broad-based black economic empowerment framework, an Ownership Allocation Table (figure 1) is proposed to allocate the 20 ownership points. Two key principles underpin the proposed table to allocate ownership points.

These include:

- *Allocation by black people’s ability to exercise ownership rights, including:*

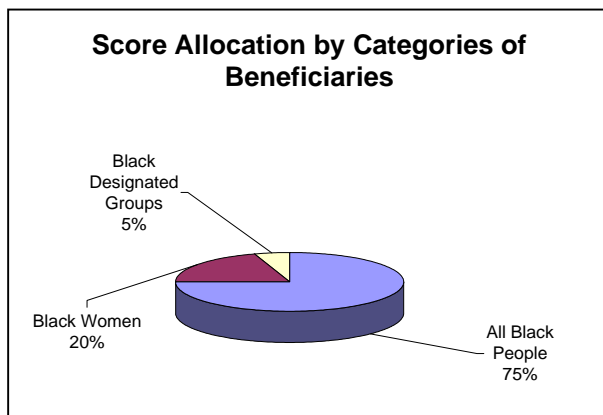
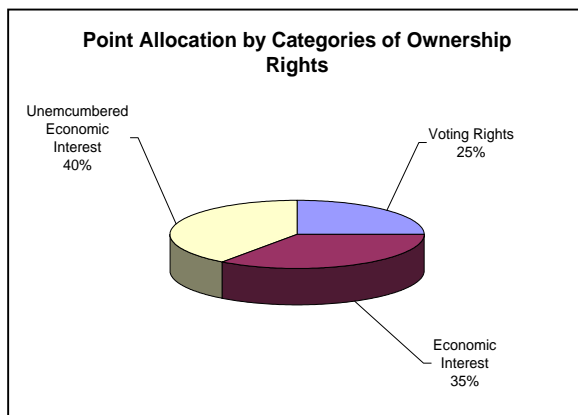
- *unrestricted voting rights,*
- *the right to receive economic interest such as dividends and capital gains,*
- *unrestricted and unencumbered entitlement to economic interest.*

- *Allocation by the beneficiary base, taking into account participation by:*
 - *black women,*
 - *new entrants, and*
 - *black designated groups (such as black workers, black youth, black people with disabilities and black people living in rural areas).*

Figure 1: Ownership Allocation Table:

Ownership Indicator	Weighting points	Compliance target	Measurement Principles
Voting Rights:			
<i>Unrestricted voting rights in the enterprise in the hands of black people</i>	3	25%+1 vote	
<i>Unrestricted voting rights in the enterprise in the hands of black women</i>	2	10%	
Economic Interest:			
<i>Economic interest in the enterprise to which Black people are entitled</i>	4	25%	
<i>Economic interest in the enterprise to which black women are entitled</i>	2	10%	
<i>Economic interest in the enterprise to which Black designated groups are entitled</i>	1	2.5%	
<i>Level of unrestricted entitlement by black people to receive their economic interest in the enterprise</i>	8	25%	
Bonus points:			
<i>Involvement of new entrants who are black people in the ownership of enterprises</i>	1	As specified below	
<i>Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest</i>	1	As specified below	

(Example 2 illustrates the application of this Ownership Allocation Table)



The above tables indicate the allocation of points by categories of ownership rights and categories of beneficiaries. In addition to these allocations, bonus points equivalent to 5 percent of total ownership score are awarded to new entrants and over-performers.

The purpose of the allocation is to ensure that ownership structures recognised within this statement will ensure the accumulation of wealth by black people over time, without penalising these structures too harshly for the use of vendor or third party funding. In addition, black women and designated groups are specifically included to encourage their inclusion in the mainstream.

4. Key Principles

In addition to the measurement criteria set out in the Ownership Table, the following principles have been identified to benchmark measurement and recognition standards for ownership. These principles aim to promote and further accelerate BEE. These principles also aim to eliminate the recognition of fronting structures and incorrect recognition.

- ***Flow-through Principle:*** *the flow-through principle states that if the equity is held by a juristic person such as a company or a trust, only the portion owned by black people in the holding enterprise will be recognised. This will apply throughout the chain of ownership to the point where the benefit is received directly by a black natural person. The flow-through principle avoids camouflaging of non-BEE economic interest through the use of black 'fronts', and enables the identification of effective levels of ownership (See example 3).*
- ***Options and Contingent Claims:*** *Where an option is used where the economic interest is contingent upon a future event, the economic interest will be projected on a fair and reasonable basis, but will be recognised as restricted economic interest.*
- ***Organs of State, Pension Funds and Super-annuation Schemes:*** *The BEE ownership by organs of state, pension funds and super-annuation schemes are specifically excluded from the calculation from both the numerator and the*

denominator. The amount excluded from total ownership (denominator) is limited to the lower of 25 percent or the level of economic interest owned by black people (see example 4). An enterprise with more than 75 percent ownership by the state is specifically exempted from the application of this statement.

- **Bonus Points:** The statement provides for one (1) bonus point to be awarded for new entrants, where the black people buying into the enterprise have not entered into a previous transaction in which the fair market value of the company exceeded R 20 million in value. The statement also provides for one (1) bonus point to be awarded to companies which have exceeded the 25 percent target for voting rights or economic benefits.
- **Non-Circumvention:** The non-circumvention principle allows for identification of fronting or other structures which aim to misrepresent the level of ownership. Rating agencies are required to maintain a database of such structures. In order to ensure that ownership information is not misrepresented, enterprises are required to provide appropriate documentation to evidence their ownership.

Example 1: Application of Statement 100 when applying other BEE scorecards

The current draft of the ICT charter allocates 15 percent (rather than the dti recommended 20 percent) to ownership. The calculation below illustrates how many ownership points an IT company will score if it applies the ICT charter, if it scores 12 points in terms of Statement 100:

Conversion Formula:

$$BScore = \frac{SScore}{20} \times BWeight$$

Where:

BScore is the score for ownership in terms of the applicable BEE Scorecard

SScore is the score for ownership derived using the scorecard in paragraph 4.4 and Statement 100

BWeight is the weighting allocated to ownership in the applicable BEE Scorecard

Calculation:

The IT company's ownership score in terms of the ICT scorecard is calculated as follows:

$$BScore = 12 \text{ points} / 20 \text{ points} * 15 \text{ percent} = 9 \text{ percent}$$

* The conversion formula allows all industries to apply the same definitions, measurement basis and recognition criteria for ownership, but allows for different weightings set through the charter process.

Example 2: Application of the Ownership Table

Company B has recently entered into a BEE transaction where a BEE consortium acquires 20 percent of its shareholding, the consortium is owned by a black businessman (70 percent) and a black women development trust (30 percent). Half of the shares were acquired and paid for on acquisition, whilst the other half will be paid off over a five year period. All black shareholders have unrestricted voting rights. Neither the black businessman nor the black women development trust have entered into any previous BEE transaction with a value in excess of R 20 million.

Calculation:

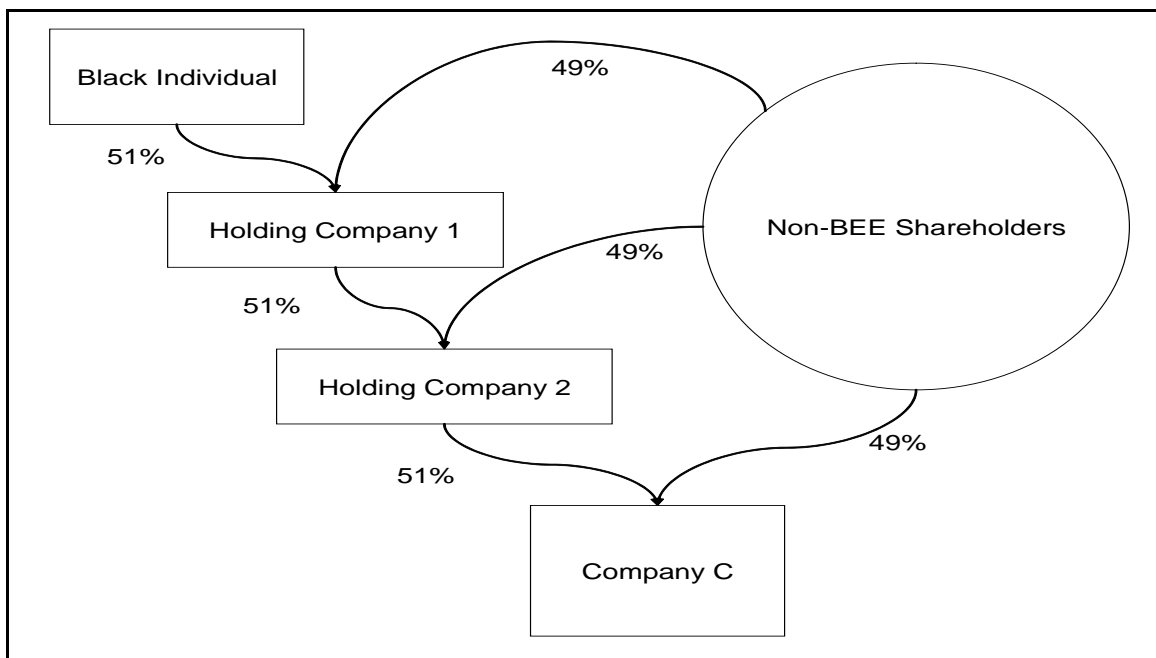
Ownership Indicator	Weighting points	Compliance target	Company B	Compliance Level	Ownership Score
Voting Rights:					
Unrestricted voting rights in the Enterprise in the hands of black people	3	25%+1 vote	20%	20%/25% = 80%	2.4
Unrestricted voting rights in the enterprise in the hands of black women	2	10%	6%	6%/10% = 60%	1.2
Economic Interest:					
Economic interest in the enterprise to which black people are entitled	4	25%	20%	20%/25% = 80%	3.2
Economic interest in the enterprise to which Black women are entitled	2	10%	6%	6%/10% = 60%	1.2
Economic interest in the enterprise to which black designated groups are entitled	1	2.5%	0%	0%/2.5% = 0%	0.0
Level of unrestricted entitlement of black people to receive their economic interest in the enterprise	8	25%	10%	10%/25% = 40%	3.2
Bonus points:					
Involvement of new entrants who are black people in the ownership of enterprises	1	As specified below	Yes	1	1
Performance in excess of the requisite targets for unrestricted voting rights or unrestricted economic interest	1	As specified below	No	0	0

Total Ownership points = 12.2 points

Additional examples using current BEE transactions will also be provided to illustrate the application of the ownership table.

Example 3: Flow-through Principle

A black individual owns 51 percent of Holding Company 1, which holds 51 percent of Holding Company 2, and which in turn holds 51 percent of Company C. How would the flow-through principle affect the determination of ownership in Company C?



Scenario A: No flow-through application (where black companies are recognised as black individuals as in the case of the financial sector charter)

Since Holding Company 1 and Holding Company 2 are recognised as black individuals (black companies with > 50 percent shareholding). Company C is 51 percent black owned and meets all criteria. This potentially allows for non-BEE shareholders to hide at different tiers above the holding company to circumvent this statement.

Scenario B: Applying the Flow-through principle

Effective black ownership in Company C is $51\% \times 51\% \times 51\% = 12.5$ percent. This is correct, since for every Rand's worth of dividends and other economic benefits flowing

from C, only 12.5 cents flows into the pockets of black investors. The majority of the benefits (87.5 percent) flow to non-BEE shareholders at different levels of the holding structure.

Example 4: Exclusion of State Ownership, Pension Funds and Super-annuation Schemes

A company is owned by black investors (18 percent), pension funds (20 percent) and other non-BEE investors (62 percent). How can we determine the level of black economic interest in the structure?

Step 1: Determining Direct Black Ownership

Direct Black Ownership = 18 percent

(Pension fund and government holding is specifically excluded)

Step 2: Determine exclusion from total shareholding

Exclusion from total ownership = the lower of 25 percent or the percentage owned by pension funds (20 percent) or the percentage owned by black people (18 percent) = 18 percent

Step 3: Determine total shareholding

Total shareholding = 100 percent less 18 percent = 82 percent

Step 4: Determine overall black economic interest

Economic interest recognised in the scorecard = 18 percent / 82 percent = 21.9 percent