

 Eskom	<b>Standard</b>	<i>(final)</i>
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Title: **Application of the Broad-Based Black Economic Empowerment Codes of Good Practice within Eskom**

Unique Identifier: **32- 417**

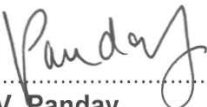

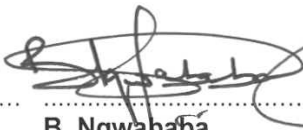
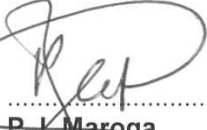
Document Type: **EST**

Revision: **0**

Effective date: **May 2008**

Total pages: **23**

Revision date: **April 2009**

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## **1 Introduction**

Section 10 of the Broad-Based Black Economic Empowerment Act, 53 of 2003 (the “Act”) states that:

*“Every Organ of State and Public Entity must take into account and, **as far as is reasonably possible**, apply any relevant code of good practice issued in terms of this Act in –*

- *Determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law;*
- *Developing and implementing a preferential procurement policy;*
- *Determining qualification criteria for the sale of state-owned enterprises; and*
- *Developing criteria for entering into partnerships with the private sector.”*

With the Broad-Based Black Economic Empowerment (“B-BBEE”) Codes of Good Practice (the “Codes”) coming into operation there is a need to align Eskom’s current practices and processes regarding BEE with the Codes.

## **2 Document Content**

This Standard will set out the manner in which Eskom will apply various aspects of the Codes across its divisions, its wholly owned subsidiaries as well as entities wherein Eskom has a controlling interest.

## **3 Supporting Clauses**

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### **3.1 Scope**

#### **3.1.1 Purpose**

The purpose of this Standard is to ensure uniform application of the Codes across Eskom.

#### **3.1.2 Applicability**

This Standard applies throughout Eskom Holdings Limited, its divisions, subsidiaries and entities wherein Eskom has a controlling interest (collectively referred to as “Eskom”).

## **3.2 Normative/Informative References**

Parties using this Standard shall apply the most recent edition of the documents listed below:

### **3.2.1 Normative**

- Implementation of Eskom's Black Economic Empowerment Strategy, Directive 32-416 ("Directive 32 - 416")
- Black Economic Empowerment Strategy for Eskom Holdings Limited, December 2006 (the "Strategy")
- The Broad-Based Black Economic Empowerment Act, 53 of 2003
- The Codes of Good Practice under Section 9(1) of the Act

### **3.2.2 Informative**

- Eskom's Procurement and Supply Chain Management Policy (32-187)
- Eskom's Procurement and Supply Chain Management Procedure (32-188)
- "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 under Section 11 of the Act

## **3.3 Definitions**

Any term or phrase assigned a specific meaning in the Codes and used in this Standard, has the same meaning as assigned in the Codes unless otherwise stated in this Standard or within Directive 32- 416. Terms or phrases as defined in the Codes are attached hereto as Appendix 1.

Specific terms and phrases as set out in this Standard are as follows:

**B-BBEE Status:** Refers to an entity's level of contribution to BEE (e.g. "Level Four Contributor").

**BEE Advisor:** Individuals that form part of the BEE function within P&SCM and who report directly to the BEE Programme Manager.

**BEE Programme Manager:** The head of the BEE function who is responsible for the implementation and management of BEE in Eskom and who reports directly to the GM: P&SCM.

**Black:** "Black people" are defined as African, Coloured or Indian persons who are natural persons and:

- are citizens of the Republic of South Africa by birth or descent; or
- are citizens of the Republic of South Africa by naturalization before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or
- Became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalization, prior to that date.

**Buyer:** Employees appointed by Eskom in writing as accredited buyers, after conforming to Eskom's prescribed requirements.

**Disabled Persons:** Persons with a long term or recurring physical or mental impairment that substantially limits their entry into, or advancement in employment.

**Hierarchy of Procurement:** Refers to Eskom's hierarchy of preference with respect to the awarding of contracts to Black Suppliers as set out in Directive 32- 416, based on the turnover of the Supplier, its percentage of Black ownership and management and its overall B-BBEE Status.

**Supplier:** Any person or entity that does business with Eskom or tenders to do business with Eskom and includes consultants, contractors and providers of goods and services.

**Verification Certificate:** The certificate **and accompanying documentary proof** obtained from an Accredited Verification Agency or a Verification Agency (as defined in Directive 32- 416) confirming the B-BBEE Status of a Supplier.

### **3.4 Abbreviations**

**BEE:** Black Economic Empowerment

**B-BBEE:** Broad-Based Black Economic Empowerment

**EME:** Exempted Micro Enterprises

**ESDEF:** Eskom Development Foundation

**EXCO:** Executive Committee

**GM:** General Manager

**HR:** Human Resources

**IT:** Information Technology

**JV:** Joint Venture

**LME:** Large Measured Entity

**NPBT:** Net Profit before Tax

**P&SCM:** Procurement and Supply Chain Management

**QSE:** Qualifying Small Entity

**SITA:** State Information Technology Agency

**VAT:** Value-Added Tax

### **3.5 Roles and Responsibilities (Eskom and its Suppliers)**

#### **3.5.1 General Application of the Codes based on Turnover**

**Eskom:** Eskom's own B-BBEE Status as a state-owned entity is not dependent on its turnover and will be measured against the Adjusted Scorecard as set out in Statement 004 of the Codes (attached hereto as Appendix 2). The custodian of Eskom's BEE verification and certification processes is the BEE Programme Manager who will ensure that Eskom's B-BBEE Status is verified in terms of the Codes.

**Suppliers:** Suppliers to Eskom will be classified on Eskom's vendor management system in accordance with the classifications set out below, which are based on the turnover of a Supplier as stipulated in the Codes.

**a. Exempted Micro Enterprises (Total Revenue  $\leq$  R5m; No Scorecard) (“EME”s)**

Measurement	B-BBEE Status	BEE Procurement Recognition Level
50% or more Black-owned	Level 3	110%
Automatic qualification based on total revenue not exceeding R5m (five million Rand)	Level 4	100%

EMEs have an automatic B-BBEE Status of a “Level Four Contributor” by virtue of their total revenue not exceeding R5m (five million Rand). A business claiming EME status must provide Eskom with documentary proof of total revenue by submitting a copy of its latest annual financial statements verified by an auditor or certified accounting officer.

The Codes allow Black EMEs the opportunity to obtain a higher B-BBEE Status, based on higher percentages of Black ownership. EMEs submitting proof of being 50% or more Black owned or 50% or more Black Women Owned will automatically be recognised as “Level Three Contributors” in terms of the Codes. Eskom will, however, exercise its preference for those Suppliers having the highest levels of Black or Black women ownership in terms of its Hierarchy of Procurement applicable to Black Suppliers, when such Suppliers compete for Eskom business.

When making application to Eskom as a Supplier, EMEs must confirm whether they operate independently of if they are related to other EMEs. Related EMEs are EMEs controlled by another EME either directly or indirectly. If the combined turnover of related EMEs are in excess of R5m (five million Rand), then based on the combined turnover they must be measured either under the QSE Scorecard or the Generic Scorecard.

Newly incorporated entities with a turnover of up to R5m (five million Rand) will not be recognised as EMEs if they have been incorporated as a continuation of a currently existing or of a previously existing entity.

An EME may, at its own discretion be measured against the QSE Scorecard in order to maximise its level of contribution to BEE.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Latest annual financial statements verified by an auditor or a certified accounting officer.	BEE Advisor	Turnover does not exceed R5m (five million Rand)
Supplier Application Form	BEE Advisor	Names and identity numbers of shareholders, members or partners, and confirmation of the percentage of Black ownership
Supplier Application Form	BEE Advisor	Confirmation as to whether the EME operates independently of if related to other EMEs
Supplier Application Form	BEE Advisor	Confirmation that the EME does not operate as a continuation of a currently or previously existing

		entity
Verification Certificate	BEE Advisor	Confirmation of B-BBEE Status where EME chooses to be measured against the QSE Scorecard

**b. Start-up enterprises**

Measurement	Contract Value
Generic Scorecard	> R35m
QSE Scorecard	> R5m </= R35m

Start-up enterprises are measured as EMEs (i.e. automatic “Level Four Contributor”) for the first year of their formation or incorporation only, irrespective of their expected total revenue. A business claiming to be a Start-up enterprise is required to provide documentary proof of its status as confirmed by an auditor or a certified accounting officer.

However, when tendering for Eskom contracts, Start-up enterprises are required to submit a QSE Scorecard for contract values greater than R5m (five million Rand) and up to R35m (thirty five million Rand). When tendering for contracts in excess of R35m (thirty five million Rand), they are required to submit the Generic Scorecard. Both Scorecards must be based on annualised data.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Letter signed off by an auditor or a certified accounting officer confirming that the entity is newly incorporated and is in its first year of operation	BEE Advisor	The business entity is a Start-up enterprise
Verification Certificate	Buyer, where the Start-up enterprise competes in an enquiry that will be subject to evaluation, or if the Start-up enterprise is being appointed through negotiations (without prior tendering)	Proof of B-BBEE Status against the relevant Scorecard when competing for contracts in excess of R5m (five million Rand)

**c. Qualifying Small Enterprises (Total Revenue > R5m </= R35m; QSE Scorecard) (“QSE”s)**

QSEs are measured in accordance with their own scorecard contained in Code Series 800 of the Codes, whereby they are entitled to select any 4 (four) of the 7 (seven) elements for purposes of ascertaining their B-BBEE Statuses.

QSEs will nevertheless be required to provide Eskom with their percentages for Black / Black women / Black Disabled ownership and management irrespective of whether these elements were chosen by the Supplier to ascertain its B-BBEE Status. Within the category of QSEs, Eskom will, in accordance

with the Hierarchy of Procurement, exercise its preference for those QSEs with the highest levels of Black / Black women / Black Disabled ownership and management.

A QSE may elect to receive the benefits of the statements contained in Code Series 100 regarding its measurement of ownership. The QSE Scorecard will still remain applicable to all other elements in this instance.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Verification Certificate	BEE Advisor	B-BBEE Status in terms of the Codes / Sector Code
Supplier Application Form	BEE Advisor	Names and identity numbers of shareholders, members or partners, and confirmation of the percentage of Black ownership
Supplier Application Form	BEE Advisor	Names and identity numbers of directors, members or partners, and confirmation of the percentage of Black management

**d. Other Enterprises (Total Revenue > R35m; Generic Scorecard) (“LME”s)**

Large Suppliers with turnovers in excess of R35m (thirty five million Rand) will be measured against all seven elements of the Generic Scorecard as set out in the Codes.

In terms of its Hierarchy of Procurement, Eskom will exercise its preference for LMEs which are “Level One Contributors” up to “Level Four Contributors”, with preference being given to those Suppliers with the highest B-BBEE Statuses within this category.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Verification Certificate	BEE Advisor	B-BBEE Status in terms of the Codes / Sector Code

**e. Enterprises subject to Sector Transformation Charters and Sector Codes**

Suppliers that are subject to a Sector Transformation Charter must be assessed in accordance with the Codes until such time as the Sector Transformation Charter has been gazetted as the Sector Codes of Good Practice (Sector Codes). A Sector Transformation Charter is merely an expression of an industry’s commitment to transformation and has no legal status, and will therefore not be binding on Eskom.

Sector Codes, however, have the same legal status as the Codes when gazetted and will therefore become binding on Eskom as a state-owned entity when doing business with a Supplier belonging to the particular Sector.

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<b>Document To Be Obtained From Supplier</b>	<b>Person Responsible For Obtaining Document</b>	<b>Confirmation Required</b>
Supplier Application Form	BEE Advisor	Confirmation of Sector Code applicability



### 3.5.2 Specific Application of the Elements of the Scorecards

#### a. Ownership (Code Series 100)

<b>Generic Scorecard (LMEs)</b>	<b>20 points</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>Not Applicable</b>

**Eskom:** As Eskom is a wholly state-owned entity, its B-BBEE Status will be measured in terms of the Adjusted Scorecard where the ownership element is specifically excluded, as ownership by the government or organs of state cannot be classified as Black-Owned.

**Suppliers:** With respect to its Suppliers, Eskom will require the various entities listed below to submit proof of their B-BBEE Statuses based on the following specific requirements:

#### I. Group and Divisional Structures

Suppliers that belong to a group of companies or are subsidiaries of holding companies, or which are divisions of a particular subsidiary or company, are required to submit proof of the B-BBEE Status of the particular subsidiary, and NOT the B-BBEE Status of the entire group of companies or that of the holding company only, or of the particular division. In other words, Eskom requires proof of the B-BBEE Status of **the legal entity / juristic person** with whom Eskom will place a contract. It must be noted that a division within a company is NOT recognised as a legal person for the establishment of a valid contract.

#### II. Joint Ventures / Consortiums

Eskom will only recognise an entity as a joint venture if it meets the following criteria:

- A valid joint venture agreement exists between the partners of the joint venture and sets out with clarity the rights and obligations of each of the partners and their profit-sharing ratios. Where a joint venture competes in a tender, the joint venture agreement must be included as a tender returnable and reviewed by Legal or Corporate P&SCM for acceptance. A contract will not be placed with a joint venture in the absence of the joint venture agreement;
- The joint venture will operate as a single business entity for the duration of the contract. Eskom must reserve its right to terminate the contract with a joint venture where the joint venture partners fail to carry out their obligations as set out in the joint venture agreement and in terms of its contract with Eskom, or where there is a breakdown of the relationship between partners;
- The joint venture will submit a Verification Certificate confirming the B-BBEE Status for the joint venture as a single entity; and
- The joint venture will have a single designated bank account as set out in the joint venture agreement, and Eskom will pay the joint venture as a single business entity into this bank account only.

Eskom will load a joint venture as a single business entity on its vendor management and purchasing systems.

### **III. Multinationals and Equity Equivalent Programmes**

A Multinational is a business operating in South Africa with its headquarters situated outside South Africa (i.e. international headquarters).

Multinationals operating as Global Practices cannot be assessed in the same way as that of South African Multinationals, other Multinational Businesses or local South African businesses in terms of Black ownership. A Global Practice is a *globally and uniformly applied practice of a Multinational, restricting alienation of equity or the sale of businesses in its regional operations*, which practice must have existed prior to the promulgation of the Act.

The Codes and Statement 103 of Code Series 100 in particular, provide Multinationals operating as Global Practices with the opportunity to participate in Equity Equivalent Programmes (EEPs) in order to enhance their contributions toward B-BBEE in terms of the Codes.

If a Multinational has been recognised for its participation in an EEP, then Eskom will require proof that the Multinational operates as a Global Practice and that the EEP in which the Multinational participates has been recognised and approved by the Minister of Trade and Industry (if not Sector Specific), or forms part of a Sector Code.

### **IV. Private Equity Funds**

Where a Supplier recognises its ownership or part ownership by a Private Equity Fund as ownership by a Black shareholder, Eskom must check all supporting documentation provided by the Supplier together with the Verification Certificate in order to confirm that such Suppliers are in compliance with the criteria set out below allowing for such recognition as set out in the Codes:

- More than 50% of any Exercisable Voting Rights associated with Equity Instruments through which the Private Equity Fund holds rights of ownership are held by Black people;
- More than 50% of profits made by the Private Equity Fund after realising any investment made by it, must by written agreement, accrue to Black people;
- The Private Equity Fund manager is a BEE Owned Company as defined; and
- More than 50% of the value of the funds invested by any Private Equity Fund must at all times be invested in Black owned enterprises that were at least 25% Black owned before the investment of the Private Equity Fund.

### **V. Broad-based Ownership (B-BOS) and Employee Ownership Schemes (ESOPs)**

When doing business with Suppliers that are owned or partly owned by B-BOSs or ESOPs, Eskom must check all supporting documentation provided by the Supplier together with the Verification Certificate in order to confirm that such Suppliers are in compliance with the criteria set out in Annexe 100(B) of Statement 100 of the Codes (attached hereto as Appendix 3).

Eskom will not recognise the Supplier as a B-BOS or ESOP for purposes of BEE without the relevant supporting documentation confirming that all criteria have been met in accordance with the Codes.

### **VI. Trusts**

When doing business with Suppliers that are owned or partly owned by trusts, Eskom must check all supporting documentation provided by the Supplier together with the Verification Certificate in order to confirm that such Suppliers are in compliance with the criteria set out in Annexe 100(B) of Statement 100 of the Codes (attached hereto as Appendix 3).

Eskom will not recognise the Supplier as a trust for purposes of BEE without the relevant supporting documentation confirming that all criteria have been met in accordance with the Codes.

**Suppliers Partly or Fully Owned by the Government**

Where a Supplier is partially owned by the government or an organ of state, then such ownership is excluded from all calculations, unless specifically allowed by the Minister (of Trade and Industry). Where such ownership has been specifically allowed in calculations, the supplier must provide documentary proof of the specific dispensation allowing for the recognition of the ownership element.

**VII. Changes in B-BBEE Status**

Suppliers contracted to do business with Eskom will, in terms of their contract be obliged to notify Eskom in writing of any changes in their B-BBEE Status. Where a change in the Supplier's B-BBEE Status is as result of a sale / loss of shares by a Black shareholder, or any other change to its business composition or legal status, then the Supplier must immediately begin a new BEE verification process and provide Eskom with confirmation of it's B-BBEE Status by submitting an updated Verification Certificate by no later than 30 (thirty) days from notification, or as otherwise agreed with Eskom.

This pending change of B-BBEE Status will be indicated on the vendor management system.

Where the change of ownership, business composition or legal status has negatively impacted on the Supplier's B-BBEE Status, then Eskom may exercise its right to terminate or re-negotiate the contract. The right to terminate or re-negotiate the contract as a result thereof must be contained in the contract with the Supplier.

<b>Document To Be Obtained From Supplier</b>	<b>Person Responsible For Obtaining Document</b>	<b>Confirmation Required</b>
Verification Certificate	BEE Advisor	B-BBEE Status of the legal entity with whom Eskom will contract, where the work / services will be rendered by a particular division or subsidiary of a group of companies  OR  B-BBEE Status of the JV as a single business entity  OR  B-BBEE Status of Suppliers wholly or partly owned by Private Equity Funds, B-BOSs, ESOPs and trusts
Joint Venture Agreement	Buyer, where the JV competes in an enquiry that will be subject to evaluation, or if the JV is being appointed through negotiations (without prior tendering)	Clarity on the rights and obligations of all JV partners and that the JV will operate as a single business entity. The JV agreement should also stipulate the bank account into which the JV must be paid

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Copy of the director's report, company prospectus, formal company policy or letter from an authorised director	BEE Advisor	Proof of operating as a Global Practice for a Multinational participating in an EEP
Letter from the Minister of Trade & Industry	BEE Advisor	Confirmation that the EEP in which the Multinational participates has been approved by the Minister of Trade & Industry if not part of a Sector Code
Supporting Documentation	BEE Advisor	Proof that the EEP forms part of a Sector Code
Supporting Documentation	BEE Advisor	All criteria have been met in terms of the Codes regarding Private Equity Funds, B-BOSs, ESOPs and Trusts
Dispensation from the Minister of Trade & Industry	BEE Advisor	Recognition of the element of ownership where the Supplier is partly or fully state-owned
Notice regarding change in B-BBEE Status	Supplier to hand notice over to the Project Manager <sup>1</sup> / Employer's Representative / Employer's Agent / Engineer <sup>2</sup> who must in turn notify the BEE Advisor	Change in B-BBEE Status
Updated Verification Certificate	BEE Advisor to follow up with Supplier	Impact of change in ownership, business composition or legal status on B-BBEE Status

<sup>1</sup> Project Manager, Employer's Representative and Employer's Agent are terms used in the NEC suite of contracts.

<sup>2</sup> Term used in the FIDIC suite of contracts

**b. Management Control (Code Series 200)**

<b>Generic Scorecard (LMEs)</b>	<b>10 points</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>15 points</b>

**Eskom:** For purposes of its own measurement against the Adjusted Scorecard, Eskom differentiates between its different tiers of management as follows:

- I. Board:** Persons elected by Eskom’s shareholder to serve as members of its board of directors. Eskom will earn points based on the level of exercisable voting rights of Black board members and the number of Black executive directors, using the Adjusted Recognition for Gender.
- II. Senior Top Management:** EXCO will be classified as Senior Top Management within Eskom. With reference to the Codes and to Form EEA9 of the regulations issued under the Employment Equity Act (“EE Regulations”), “Senior Top Management” are those employees who are:
  - Appointed by or on the authority of the Board and who are operationally involved in Eskom’s day-to-day management; who
  - Have individual responsibility for the *overall* and /or *financial* management of Eskom; and who are
  - Actively involved in the development and /or implementation of Eskom’s overall business strategy.

Eskom will earn points based on the level of Black representation among Senior Top Management, with the Adjusted Recognition for Gender being applicable to the Adjusted Scorecard.

- III. Other Top Management:** Within Eskom, Senior GMs and GMs will be classified as “Other Top Management” and refers to those managers other than Senior Top Management. Top Management” are those employees who are:
  - Appointed by or on the authority of the Board and who are operationally involved in Eskom’s day-to-day management; who
  - Have *individual responsibility for their particular area of management* within Eskom; and who are
  - Actively involved in the development and /or implementation of Eskom’s overall business strategy *insofar as it relates to their particular area of responsibility*.

Eskom will earn points against the level of Black representation among Other Top Management with the Adjusted Recognition for Gender being applicable.

Employees classified as Senior Top Management and Top Management must not be accounted for again under the employment equity element.

**Suppliers:** While Eskom cannot influence the level of Black management within a Supplier’s business, Eskom will exercise a preference for those Suppliers with higher percentages of Black, Black women and Black Disabled managers.

BEE Advisors must check supporting documentation submitted by the Supplier to confirm that employees classified as Senior Top Management and Top Management are not accounted for again under the employment equity element.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Supporting Documentation	BEE Advisor	Employees classified as Senior Top Management and Top Management are not accounted for again under the employment equity element

**c Employment Equity (Code Series 300)**

<b>Generic Scorecard (LMEs)</b>	<b>15 points (plus 3 bonus points)</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points (plus 2 bonus points)</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>15 points</b>

**Eskom:** It is the responsibility of HR Shared Services, as led and managed by Eskom’s HR Director, to record and maintain Eskom’s employment equity data, and provide audited data to the BEE Programme Manager on an annual basis for purposes of Eskom’s measurement against the Adjusted Scorecard.

**Suppliers:** All Suppliers are required to be fully compliant with the Employment Equity Act, 1998 (EEA).

Suppliers tendering for Eskom business are required to submit their employment equity certificates/declarations as required by the EEA as a tender returnable, and failure to do as much at least by the time of contract award will deem the tender “commercially unacceptable” and unsuitable for tender award.

Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Employment Equity Certificate / declaration (as applicable)	BEE Advisor  Buyer, where the Supplier competes in an enquiry that will be subject to evaluation, or if the Supplier is being appointed through negotiations (without prior tendering)	Compliance with the EEA

**d Skills Development (Code Series 400)**

<b>Generic Scorecard (LMEs)</b>	<b>15 points</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>20 points</b>

**Eskom:** It is the responsibility of HR Shared Services as led and managed by Eskom's HR Director, together with the BEE Programme Manager, to ensure that Eskom is accurately recognised for its contribution toward skills development of its employees in terms of the Codes. This responsibility includes ensuring that Eskom:

- Is compliant with the Skills Development Act, 1998 and Skills Development Levies Act, 1999;
- Is registered with the applicable SETA;
- Has identified skills that will be classified as Core, Critical and Scarce (collectively, Priority Skills);
- Has developed a Workplace Skills Plan;
- Has implemented programmes targeted at developing Priority Skills generally, and specifically for Black employees;
- Accurately records and consolidates all legitimate expenses incurred for any learning programme listed on the Learning Programme Matrix (attached hereto as Appendix 4) as evidenced by an invoice or appropriate internal accounting record; and
- Accurately records and consolidates all legitimate expenses incurred on Black employees for any other certified and uncertified training programmes provided by Eskom as part of its Workplace Skills Plan as evidenced by an invoice or appropriate internal accounting record.

Legitimate expenses include:

- Cost of training materials;
- Cost of trainers;
- Cost of training facilities, including the cost of catering;
- Scholarships and bursaries;
- Course fees;
- Accommodation and travel; and
- Administration costs such as organisation of training, the cost of a skills development facilitator or a training manager.

Salaries and wages of employees participating as learners in any learning programme will only constitute skills development spend if the particular learning programme is a learnership or falls within categories B, C or D of the Learning Programme Matrix.

Certified programmes (i.e. internally developed training programmes accredited by a South African or internationally recognised accreditation body) are recognised against evidence of an invoice while uncertified programmes and category G learning programmes under the Learning Programme Matrix are limited to a maximum of 15% recognition of total skills development spend.

A learning programme qualifies as being certified if an independent written certification as per the contents of the “Learning Achievements” column of the Learning Programme Matrix is furnished. Where no certification is produced, an enrolment certificate must be issued by an independent person confirming that the employee has:

- Enrolled for, is attending and is making satisfactory progress in the learning programme; or
- Enrolled for but has not attended the learning programme; or
- Attended the training programme but has failed an evaluation of their learning progress.

Scholarships and bursaries will only be recognised as skills development expenditure for purposes of recognition against the Codes where:

- Eskom does not recover any portion of the bursary or scholarship, and where it does recover, the right of recovery involves the obligation of successful completion within an allocated time period; and
- The grant is unconditional or where the condition involves the obligation of continued employment for a period no longer than the period of studies.

The Adjusted Recognition for Gender applies to skills development expenditure.

<b>Data / Reports Required By Eskom</b>	<b>Responsibility For Data Management</b>	<b>Output For Purposes Of Assessment Against The Codes</b>
Workplace Skills Plan	HR Director	Cannot score any points for skills development without having this in place
Classification of Priority Skills	HR Director	Cannot score any points for skills development if Eskom cannot show that it has implemented programmes targeting the development of Priority Skills among Black employees
Recording and consolidation of legitimate expenses spent on learnerships, certified training programmes and uncertified training programmes	Training Managers in business units within each division, together with HR Shared Services, led and managed by the HR Director	Only legitimate expenses as defined in the Codes can be claimed as skills development spend

**Suppliers:** While Eskom cannot influence the level of skills development directed towards Black employees within a Supplier’s business, Eskom will exercise a particular preference for those Suppliers that have recognisable skills development spend directed toward Black Disabled employees.



Document To Be Obtained From Supplier	Person Responsible For Obtaining Document	Confirmation Required
Supporting Documentation	BEE Advisor	The number of Black Disabled employees that are recipients of the Supplier's skills development initiatives

**e Preferential Procurement (Code Series 500)**

<b>Generic Scorecard (LMEs)</b>	<b>20 points</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>20 points</b>

**Eskom:** Eskom will continue to exercise its preference for Black suppliers in accordance with its Hierarchy of Procurement as set out in Directive 32- 416. It will be the responsibility of the BEE function within Eskom, as led and managed by the BEE Programme Manager, to put in place the relevant reporting structures in order to centrally monitor, record, and consolidate Eskom's procurement spend across divisions and subsidiaries.

Procurement spend within Eskom will now be measured and classified in accordance with the Codes.

In terms of the Codes, Total Measured Procurement Spend includes:

- Goods and services comprising the cost of sales of the business;
- Goods and services procured which constitutes a business' operating expenditure;
- Capital expenditure incurred;
- Goods and services procured from organs of state and public entities listed in schedules 2 (e.g. Eskom) and 3 (e.g. SITA) to the Public Finance Management Act, 1998;
- Goods and services procured from suppliers with a monopolistic position;
- Procurement for a third-party or a client, where the cost of that procurement is an expense recorded in the service-provider's annual financial statements (and not in the annual financial statements of the third-party / client);
- Outsourced labour expenditure (i.e. labour brokers and independent contractors);
- Payments to post-retirement funding schemes, to medical aids or to medical insurers for the benefit of employees, excluding any portions of such payments which are contributions to capital investments of employees. (The scheme or insurer must issue a certificate dividing payments between the capital investment portion and the balance to establish the amount that is measurable within Total Measured Procurement Spend);

- Trade commissions or similar payments payable by a business to any other person pursuant to the business or trade of the company;
- Goods and services procured in implementing and complying with B-BBEE requirements. This will exclude investments in or loans to an Associated Enterprise under Statement 102, and the actual contributions made for enterprise development under Code Series 600 and socio-economic development under Code Series 700, but includes the expenditure incurred in facilitating those contributions;
- Goods and services imported or procured from a non-South African source; and
- Goods and services procured from the business' subsidiary or holding companies, except as provided in Statement 002.

Total Measured Procurement Spend specifically excludes:

- Taxes, including rates charged by a municipality or other local government;
- Goods or services procured from organs of state and public entities listed in Schedule 1 of the PFMA (unless procurement is from a local government entity acting as a reseller);
- Amounts payable to employees as part of their basic salaries or wages as well as any emolument or similar payment paid to a director of a company;
- Investments in or loans to Associated Enterprises under Statement 102;
- Investments, loans or donations qualifying for recognition under Codes 600 (enterprise development) and 700 (socio-economic development);
- Procurement for a third-party or a client, where the cost of that procurement is an expense recorded in annual financial statements of that third-party/client;
- The following imported goods and services:
  - Imported capital goods or components for value-added production in South Africa, provided there is no existing local production of such goods or components, and importing those goods or components promotes further value-added production within South Africa; and
  - Imported goods and services other than those listed above, where there is no local production of those goods or services including, but not limited to, imported goods or services that carry a brand different to the locally produced goods or services, or have different technical specifications to the locally produced goods or services.

In order to enable calculation of Eskom's preferential procurement score, the BEE function must ensure that the following can be deduced and consolidated from spend reports:

- Eskom's Total Measured Procured Spend (TMPS) as per the specific inclusions and exclusions set out above; and
- Total B-BBEE Procurement Spend (TBPS) (by multiplying Eskom's procurement spend from each individual Supplier by the Supplier's BEE Recognition Level).

In order to ensure that Eskom's obtains enhanced recognition for its preferential procurement initiatives, the BEE function must ensure that spend with the following categories of Suppliers is specifically indicated as part of its reporting requirements:

- Value-Adding Enterprises as defined in the Codes;

- Suppliers that are recipients of Eskom’s enterprise development initiatives; and
- Black Suppliers rendering professional and / or consulting services. Examples of professional and consulting services include auditing, advertising, engineering, IT services and consulting, legal services, quantity surveying, etc.

<b>Data / Reports Required By Eskom</b>	<b>Responsibility For Data Management</b>	<b>Output For Purposes Of Assessment Against The Codes</b>
Total Measured Procurement Spend (Inclusions)	BEE function as led and managed by the BEE Programme Manager	To ascertain Eskom’s score for preferential procurement
Total Measured Procurement Spend (Exclusions)	BEE function as led and managed by the BEE Programme Manager	To ascertain Eskom’s score for preferential procurement
Total B-BBEE Procurement Spend	BEE function as led and managed by the BEE Programme Manager	To ascertain Eskom’s score for preferential procurement
Supplier’s NPBT, total labour costs and VAT number for classification of Value-Adding Enterprises as defined in the Codes	BEE function as led and managed by the BEE Programme Manager	Enhanced Recognition
Identification of those Suppliers that are recipients of Eskom’s enterprise development initiatives	BEE function as led and managed by the BEE Programme Manager	Enhanced Recognition
Identification of Black Suppliers rendering professional / consulting services to Eskom	BEE function as led and managed by the BEE Programme Manager	Enhanced Recognition

**Suppliers:** Based on Eskom’s Hierarchy of Procurement, Eskom’s preference is to do business with those Suppliers with the highest B-BBEE Statuses, thereby encouraging its Suppliers to procure goods and services from other suppliers that have high B-BBEE Statuses which ultimately results in the desired transformation within Supplier markets.

Where it is not possible for Eskom to do business with Suppliers that have high B-BBEE Statuses (i.e. levels 1-4), then Eskom will ensure that such Suppliers will be contractually bound to subcontract an agreed percentage of the of the contract value to acceptable Black Suppliers or to procure certain components, consumables and/or services from Black Suppliers, as part of its overall BEE Strategy as set out in Directive 32- 416.

**f Enterprise Development (Code Series 600)**

<b>Generic Scorecard (LMEs)</b>	<b>15 points</b>
<b>Target:</b>	<b>3% of net profit after tax</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Target:</b>	<b>2.25% of net profit after tax</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>15 points</b>
<b>Target:</b>	<b>3% of net profit after tax</b>

**Eskom:** For purposes of its own measurement, Eskom, together with Eskom Development Foundation (ESDEF) management, must determine whether Eskom will be recognised for its enterprise development contributions at a date commencing up to 5 (five) years prior to the operation of the Codes, or whether it will be recognised from the date of inception of the Codes. It will be the responsibility of ESDEF together with the BEE Programme Manager to ensure that all Eskom's enterprise development policies, practices and investments are aligned with the requirements for recognition in accordance with the Codes, and in particular with that of the Benefit Factor Matrix (attached hereto as Appendix 5).

The Benefit Factor Matrix sets out the means to determine the types of recognised contributions and the way to calculate the value of the contribution, which involves multiplying the benefit factor with the contribution amount.

The Codes recognise Qualifying Beneficiaries of enterprise development as:

- Category A: EMEs or QSEs that are 50% or more Black-owned or Black Women Owned;
- Category B: Any entities that are:
  - 50% or more Black-owned or Black Women Owned; or
  - 25% or more Black-owned or Black Women Owned who are with B-BBEE Statuses of Levels One to Six.

<b>Data / Reports Required By Eskom</b>	<b>Responsibility For Data Management</b>	<b>Output For Purposes Of Assessment Against The Codes</b>
Proof of enterprise development spend on Qualifying Beneficiaries based on the Benefit Factor Matrix from chosen date of commencement (if this date is prior to the commencement of the Codes)	ESDEF and BEE Programme Manager	Ascertaining Eskom's enterprise development contributions for its first 5 (five) year period, in terms of the Codes
Proof of enterprise development spend on Qualifying Beneficiaries based on the Benefit Factor Matrix from the	ESDEF and BEE Programme Manager	Ascertaining Eskom's enterprise development contributions in terms of the Codes for ongoing assessment of Eskom's B-

date of commencement of the Codes		BBEE Status
Timesheets	BEE Advisors responsible for Supplier development within the BEE function	Number of hours spent by Eskom employees in assisting Black suppliers as part of Eskom's enterprise development initiatives
Shorter payment periods afforded to SBEs and BWOs	Accounts Payable	Measurement against the Benefit Factor Matrix for purposes of tracking Eskom's enterprise development contributions

**Suppliers:** While Eskom will not be able to influence the enterprise development initiatives of its Suppliers, it will have a preference for those LMEs meeting the target for this element, when competing for Eskom business.

**g Socio-Economic Development (Code Series 700)**

<b>Generic Scorecard (LMEs)</b>	<b>5 points</b>
<b>Target:</b>	<b>1% net profit after tax</b>
<b>QSE Scorecard (QSEs)</b>	<b>25 points</b>
<b>Target:</b>	<b>0.75% net profit after tax</b>
<b>Adjusted Scorecard (Eskom)</b>	<b>15 points</b>
<b>Target:</b>	<b>1% net profit after tax</b>

**Eskom:** Eskom, together with ESDEF management must determine whether Eskom will be recognised for its socio-economic development contributions at a date commencing up to 5 (five) years prior to the operation of the Codes, or whether it will be recognised from the date of inception of the Codes for purposes of its own measurement. It will be the responsibility of ESDEF together with the BEE Programme Manager to ensure that all Eskom's socio-economic development policies, practices and investments are aligned with the requirements for recognition in accordance with the Codes.

The intended beneficiaries of socio-economic development in terms of the Codes are Black individuals, communities or groups of people. Where beneficiaries are communities or groups of people then the percentage of Black people within the community or group will affect recognition in terms of the Codes as follows:

- Where 75% of the beneficiary group is Black, then the full value of the contribution is recognised; and
- Where less than 75% of the beneficiary group is Black, then the value of the contribution is multiplied by the percentage of Black people in the beneficiary group.

Types of socio-economic contributions recognised in terms of the Codes are set out in the Benefit Factor Matrix in Annexe 700 (A) of the Codes (attached as Appendix 6 hereto).

<b>Data / Reports Required By Eskom</b>	<b>Responsibility For Data Management</b>	<b>Output For Purposes Of Assessment Against The Codes</b>
Proof of socio-economic development spend on Black beneficiaries based on the Benefit Factor Matrix from chosen date of commencement (if this date is prior to the commencement of the Codes)	ESDEF and BEE Programme Manager	Ascertaining Eskom's development contributions for its first 5 (five) year period, in terms of the Codes
Proof of socio-economic development spend on Black beneficiaries based on the Benefit Factor Matrix from the date of commencement of the Codes	ESDEF and BEE Programme Manager	Ascertaining Eskom's socio-economic development contributions in terms of the Codes for ongoing assessment of Eskom's B-BBEE Status

**Suppliers:** While Eskom will not be able to influence the socio-economic development initiatives of its Suppliers, it will have a preference for those LMEs meeting the targets for this element, where they compete for Eskom business.

### **3.6 Implementation Date**

The implementation date is 01 May 2008.

### **3.7 Process for monitoring**

It is the responsibility of the BEE function together with the Compliance function within Corporate P&SCM to put in place the mechanisms for regular compliance audits across Eskom in order to ensure the uniform application of the Codes.

### **3.8 Related/Supporting Documents**

Appendix 1: Definitions (Schedule 1 of the Codes)

Appendix 2: The Adjusted Scorecard

Appendix 3: Annexe 100 (B) of Statement 100 of the Codes

Appendix 4: Learning Programme Matrix

Appendix 5: Benefit Factor Matrix (Enterprise Development)

Appendix 6: Benefit Factor Matrix (Socio-Economic Development)

## 4 Authorisation

This document has been seen and accepted by:

<b>Name</b>	<b>Designation</b>
PJ Maroga	Chief Executive
B Nqwababa	Finance Director
BA Dames	Chief Officer (Generation)
EL Johnson	Chief Officer (Networks and Customer Service)
MM Ntsokolo	Managing Director (Transmission Division)
A Noah	Managing Director (Distribution Division)
JA Dladla	Managing Director (Special Project 2010)
Dr SJ Lennon	Managing Director (Corporate Services Division)
ME Letlape	Managing Director (Human Resources Division)

## 5 Revisions

<b>Date</b>	<b>Rev.</b>	<b>Remarks</b>
May 2008	0	<b>Reasons for Revision:</b> To create a standard for the uniform application of the Codes across Eskom.

## 6 Development team

Louis Coetzee (Head of P&SCM Policy)

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Appendix 1

**BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT**  
**SECTION 9(1) CODES OF GOOD PRACTICE**  
**SCHEDULE 1**

**INTERPRETATION AND DEFINITIONS**

**Part 1: Interpretation**

The Codes of Good Practice shall be interpreted according to the following provisions unless the context requires a different meaning:

1. In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the Act and the BEE Strategy 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 Codes are an integral part of the Codes and a reference to the Codes includes a reference to the Schedules.

**Part 2: Definitions**

In these Codes unless the context otherwise requires:

"ABET"	means Adult Basic Education and Training as determined by the National Qualifications Authority;
"Accreditation Body"	means the South African National Accreditation System or any other Entity appointed by the Minister from time to time. a. accrediting Verification Agencies; and b. developing, maintaining and enforcing the Verification Standards;
"Acquisition debt"	means the debts of: (a) black participants incurred in financing their purchase of their equity instruments in the Measured Entity; and (b) juristic persons or trusts found in the chain of ownership between the eventual black Participants and the Measured Entity but excluding debts incurred by the Measured Entity for the same purpose as those in (a);
"Associated Enterprise"	means an Entity with which a Seller has concluded a Qualifying Transaction;
"B-BBEE"	means Broad-Based Black Economic Empowerment;
"BEE controlled company"	means a juristic person, having share holding or similar members interest, in which black participants enjoy a right to Exercisable Voting Rights that is more than 50% of the total such rights measured using the Flow Through Principle;
"BEE owned company"	means juristic person, having share holding or similar members interest, that is BEE controlled, in which black participants enjoy a right to Economic interest that is more than 50% of the total such rights measured using the Flow Through Principle;

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"BEE Procurement Recognition Level"	means the percentage BEE Procurement Recognition Levels as determined: (a) for Enterprises that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises, using statement 000; (b) for Qualifying Small Enterprises, using statement 800; and (c) for Exempted Micro-Enterprises, a deemed BEE Procurement Recognition of 100% and BEE Status of Level 4 Contributor under statement 800;
"BEE Status"	means the BEE status of a beneficiary of Enterprise Development Contributions as determined under: (a) Statement 800 for Qualifying Small Enterprises and Exempted Micro Enterprises; and (b) Statement 000 for all other Enterprises;
"Benefit Factor"	means a factor specified in the Benefit Factor Matrix applicable to fixing the monetary value of Enterprise Development and Socio Economic Development Contributions claimable under statement 600,700, 806 and 807;
"Benefit Factor Matrix"	means the Benefit Factor Matrix for Enterprise Development and Socio Economic Development Contributions annexed to statement 600,700, 806 and 807;
"Black designated groups"	(a) means unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution; (b) Black people who are youth as defined in the National Youth Commission Act of 1996; (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; (d) Black people living in rural and under-developed areas.
"Black new entrants"	means black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in any other Entity which has a total value of more than R20,000,000,000, measured using a standard valuation method;
"Black people"	has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent; or are citizens of the republic of South Africa by naturalisation; (a) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993; or (a) occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation before then;
"Broad-Based Ownership Scheme"	means a ownership scheme which meets the rules set out in Annex 100B;
"Black Professional Service Provider"	means Black individuals who provide services of a professional nature.
"Certified Learning Programme"	means any Learning Programme for which the Measured Entity has: (a) any form of independent written certification as referred to in the "Learning Achievements" column of the Learning Programmes Matrix; or if it does not have such certification; (b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 400 and 804 confirming the employee has: (i) enrolled for, is attending and is making satisfactory progress in the Learning Programme; or (ii) enrolled for but not attended the Learning; or (iii) attended the Training Programme but has failed an evaluation of their learning progress;

"Companies Act"	means the Companies Act 61 of 1973 as amended or substituted;
"Company limited by guarantee"	means a company as referred to in section 19(1)(b) of the Companies Act;
"Competent person"	means a person who has acquired through training, qualification and experience the knowledge and skills necessary for undertaking any task assigned to them under the codes;
"Core Skills"	means skills that are: (a) value-adding to the activities of the Measured Entity in line with its core business; (b) in areas the Measured Entity cannot outsource; or (c) within the production/operational part of the Measured Entity's value-chain, as opposed to the supply side, services or downstream operations;
"Critical Skills"	means those skills identified as being critical by any SETA;
"Disabled Employees"	has the meaning defined in the Code of Good Practice on Key Aspects of Disability in the Workplace issued under section 54 of the Employment Equity Act;
"EAP"	Economically Active Population as determined and published by Stats SA. The operative EAP for the purposes of any calculation under the Codes will be the most recently published EAP;
"Economic interest"	means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified Through Principles;
"EE Act"	means the Employment Equity Act of 1998, as amended;
"EE Regulations"	means the regulations under the Employment Equity Act
"Elements"	means the measurable quantitative or qualitative elements of BEE compliance in the Generic Scorecard and the Primary Codes;
"Employee"	bears the meaning as defined in the Labour Relations Act 66 of 1995 as amended;
"Employee Ownership Scheme"	means a worker or employee scheme;
"Entrepreneur"	means a person who starts and / or operates a business which includes identifying opportunities in the market, taking risks with a view of being rewarded with profits;
"Entity"	means a natural or a juristic person conducting a business, trade or profession in the Republic of South Africa;
"Enterprise Development Contributions"	means monetary or non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries: (a) Category A Enterprise Development Contributions involves Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black women owned; (b) Category B Enterprise Development Contributions involves Enterprise Development Contributions to any other Entity that is 50% black owned or black women owned; or 25% black owned or black women owned with a BEE status of between Level One and Level Six;
"Equity Equivalent contribution"	means an equity equivalent contribution made by a Multinational under an Equity Equivalent Programme;
"Equity Equivalent Programme"	means a public programme or scheme of any government department, provincial or local government in the Republic of South Africa or any other programme approved by the Minister as an Equity Equivalent Programme;
"Equity instrument"	means the instrument by which a Participant holds rights of ownership in an Enterprise;
"Equivalency Percentage"	means 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;

"Executive Members of the Board"	means those members of the Board who are executive directors as defined in the King Report;
"Exercisable Voting Right"	means a voting right of a Participant that is not subject to any limit;
"Exempted Micro Enterprises"	means an Entity with an annual turnover of less than R 5(five) million;
"Global Practice"	means a globally and uniformly applied practice of a Multinational, restricting alienation of equity in or the sale of businesses in its regional operations. The practice must have existed before the promulgation of the Act;
"Grant Contribution"	means 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;
"Higher Education Institution"	means a higher education institution as defined under the Higher Education Act of 1997;
"Inception date" @	means a date specified by a Measured Entity as being the date from which its Contributions are measurable before the commencement date of statement 600, 700, 806 and 807;
"Independent Non-Executive Board Members"	means those members of the Board that are independent directors as defined in the King Report;
"Indicator Percentage"	means 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 actual percentage compliance for each indicator and not the resulting scores;
"King Report"	means the King Report on Corporate Governance for South Africa 2002 by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa;
"Learning Programmes"	means any learning programme set out in the Learning Programme Matrix
"Learning Programme Matrix"	means the Learning Programme Matrix annexed as Annexe "400A" 804(A) in statement 400 and 804;
"Leviable Amount"	bears the meaning as defined in the Skills Development Levies Act of 1999 as determined using the Fourth Schedule to the Income Tax Act;
"Management Fees"	means the total Economic Interest received by a Broad-Based Ownership Scheme in any year less the amounts distributed or applied to beneficiaries and the amounts reserved for future distribution or application;
"Mandated investments"	means any investments made by or through any third party regulated by legislation on behalf of the actual 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;
"Measured Entity"	means an Entity as well as an organ of state or public entity subject to measurement under the Codes;
"50% black owned"	means an Entity in which: (a) black people hold more than 50% of the exercisable voting rights as determined under Code series 100; (b) black people hold more than 50% of the economic interest as determined under Code series 100; and (c) has earned all the points for Net Value under statement 100;
"50% black women owned"	means an Entity in which: (a) black women hold more than 50% of the exercisable voting rights as determined under Code series 100; (b) black women hold more than 50% of the economic interest as determined under Code series 100; and (c) has earned all the points for Net Value under statement 100;

"30% black women owned"	means an Entity in which: (d) black women hold more than 30% of the exercisable voting rights as determined under Code series 100; (e) black women hold more than 30% of the economic interest as determined under Code series 100; and (f) has earned all the points for Net Value under statement 100;
"Multinational Business"	means a Measured Entity with a business in the Republic of South Africa and elsewhere which maintains its international headquarters outside the Republic;
"National Skills Development Strategy"	means the national skills development strategy referred to in section 5(1)(a)(ii) of the Skills Development Act;
"Net Profit After Tax"	means the operating profit of a measured entity after tax. It incorporates both the equity / loss figures and abnormal items, but excludes extra ordinary items as determined by (GAAP) Generally Accepted Accounting Practices;
"Net Profit Before Tax"	means the operating profit of a measured entity before tax. It incorporates both the equity / loss figures and abnormal items, but excludes extra ordinary items as determined by (GAAP) Generally Accepted Accounting Practices;
"Net Value"	means the percentage resulting from the formula in Annex 100(C) of statement 100;
"Net-value date"	means the later occurring of the date of commencement of statement 100 and the date upon which the earliest of all still operative transactions undertaken by the Measured Entity Measured Entities in order to achieve black rights of ownership, became effective and unconditional;
"Non-profit Organisation"	means a non-profit organisation registered under the Non-Profit Organisation Act of 1997;
"Outsourced Labour Expenditure"	means any expenditure incurred in: (a) procuring the services of or from a labour broker; and (b) procuring the services of any person who receives any remuneration or to whom any remuneration accrues because of any services rendered by such person to or on behalf of a labour broker;
"Ownership Fulfilment"	has the same meaning as referred to in the ownership scorecard in statement 100;
"Participant"	means a natural person holding rights of ownership in a Measured Entity;
"Priority Skills"	means Core, Critical and Scarce Skills as well as any skills specifically identified: (a) in a Sector Skills Plan issued by the Department of Labour of the Republic of South Africa; and (b) by the Joint Initiative for Priority Skills Acquisition (JIPSA) established as part of the Accelerated and Shared Growth Initiative - South Africa (ASGISA);
"Private equity fund"	means a third party fund through which investments are made on behalf of the actual owners of the fund pursuant to a mandate given by that person to the private equity fund; ;
"Public Benefit Organisation"	means an entity as defined in section 30 of the income Tax Act of 1962;
"QSE"	means a Qualifying Small Entity that qualifies for measurement under the qualifying small Entity scorecard with a turnover of between R5 and R35 million; "Qualifying Enterprise Development Contributions" is a collective term describing Category A and B Enterprise Development Contributions and in particular Enterprise Development Contributions targeting black owned EME's and QSE's, and black youth in rural, and underdeveloped areas in statement 600;
"Socio-Economic Development Contributions"	is a collective term for Socio-Economic development programmes and contributions, approved Socio-Economic development programmes and sector specific programmes;

Approved Socio-economic development contributions	means 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:  (a) projects focusing on environmental conservation, awareness, education and waste management; and  (b) projects targeting infrastructural development, enterprise creation or reconstruction in underdeveloped areas; rural communities or geographic areas identified in the government's integrated sustainable rural development or urban renewal programmes;
"Qualifying Transaction"	means a sale of a business, valuable business assets or shares that results in the creation of sustainable business opportunities and transfer of specialised skills or productive capacity for black people;
"Realisation Points"	means the Ownership Fulfilment point added to the Net Value points in the ownership scorecard;
"Related Enterprise"	means an Entity controlled by a Measured Entity whether directly or indirectly controlled by the natural persons who have direct or indirect control over that Measured Entity or the immediate family of those natural persons;
"Rights of ownership"	is a collective term for the right to Economic Interest and the right to Exercisable Voting Rights;
"Scarce Skills"	are those skills identified as being scarce by any SETA
"Section 21 Company"	means an association not for gain incorporated under section 21 of the Companies Act;
"Sector Code"	means a code in statement 003 which is applicable to a particular sector;
"Sector Specific Programmes"	means Sector Specific Programmes that are recognised on the bases set forth in the sector code governing them;
"Seller"	means the Entity or the person concluding a Qualifying Transaction with the Associated Enterprise;
"Senior Top Management"	means employees of a Measured Entity who are:  (a) members of the occupation category of "Top Management" as determined using the EE Regulations as qualified in a Sector Code;  (b) appointed by or on the authority of the Board to undertake the day-to-day management of that Measured Entity and who:  (i) have individual responsibility for the overall management and for the financial management of that Measured Entity; and  (ii) actively involved in developing and implementing the Measured Entity's overall strategy;
"Skills Development Expenditure"	comprises the money that a Measured Entity spends on skills development. It excludes the skills development levy payable by the Measured Entity under the Skills Development Levies Act;
"Socio-Economic Development Programmes"	(a) Socio-Economic Development Programmes commonly take the following forms:  (b) development programmes for women, youth, people with disabilities, people living in rural areas;  (c) support of healthcare and HIV/AIDS programmes;  (d) support for education programmes, resources and materials at primary, secondary and tertiary education level, as well as bursaries and scholarships;  (e) community training; skills development for unemployed people and adult basic education and training; or  support of arts, cultural or sporting development programmes;
"Standard valuation method"	means a standard valuation method for an asset, an Economic Interest, or any other instrument or right relevant to measurement under statement 100, undertaken using normal valuation methods that represent standard market practise;
"Start-up enterprise"	means a recently formed or incorporated Entity that has been in operation for less than 1 year. A start-up enterprise does not include any newly constituted enterprise which merely a continuation of a pre-existing enterprise;

"Subsidiary"	has the meaning defined in section 1(3) of the Companies Act;
"Superior Contributor to BEE"	is a Level One to Level Four Contributor to BEE;
"Supplier"	means 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;
"Target"	means the targets for the various Elements in the Generic and QSE Scorecard;
"the Act"	means the Broad-Based Black Economic Empowerment Act 53 of 2003;
"the Codes"	means the Codes of Good Practice including all the statements as issued under section 9 of the Act;
"the Generic Scorecard"	means the balanced BEE scorecard as contained in statement 100;
"the PFMA"	means the Public Finance Management Act 1 of 1999 as amended;
"the QSE Scorecard"	means the QSE scorecard referred to in statement 800;
"the Skills Development Act"	means the Skills Development Act of 1998;
"the Skills Development Levies Act"	means the Skills Development Levies Act of 1999;
"the Strategy Document"	means the document entitled "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 under section 11 of the Act;
"Third Party Rights"	means 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:  (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;  (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;
"Top Manager"	means employees of a Measured Entity who hold rights of ownership, serve on the Board, undertake the day to day management, have overall responsibility for the overall financial management and are actively involved in developing and implementing the overall strategy of the Measured Entity;
"Total Labour Cost"	means the total amount of remuneration paid by an Entity to its employees determined using section 3(4) of the Skills Development Levies Act of 1999 and the Forth Schedule of the Income Tax Act of 1962;
"Total revenue"	means the total income of an Entity from its operations as determined under South African Generally Accepted Accounting Practice;
"Transformation Charters"	means the sectoral transformation charters referred to in section 12 of the Act;
"Uncertified Learning Programme"	means any Learning Programme of the Measured Entity that is not a Certified Learning Programme;
"Unincorporated Joint Venture"	means a joint venture between two or more Measured Entities effected by agreement without incorporation;
"Value-Adding Enterprise"	means an Entity registered as a vendor under the Value-Added Tax of 1991, whose Net Profit Before Tax summed with its Total Labour Cost exceeds 25% of the value of its Total Revenue;
"Voting Right"	means 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;
"Weighting"	means the weightings applied to various Elements in the Generic Scorecard;
"Workplace Skills Plan"	means the plan of a Measured Entity approved by the relevant SETA.

Appendix 2:

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**CODE SERIES 000: FRAMEWORK FOR MEASURING**  
**BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

**STATEMENT 004: Scorecards for SPECIALISED Enterprises**

Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003

**Arrangement of this statement**

Para	Subject	Page
1	<i>Objective of this statement</i>	2
2	<i>General principles</i>	2
3	<i>The Adjusted Generic Scorecard</i>	3
4	<i>The Adjusted Qualifying Small Enterprises Scorecard</i>	3
5	<i>Important Clarification</i>	3

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## **1 Objective of this statement**

The objectives of this statement are to:

- 1.1 provide guidance about the treatment of Ownership for Specialised Enterprises, for B-BBEE purposes, of:
  - 1.1.1 companies limited by guarantee;
  - 1.1.2 Higher Education Institutions;
  - 1.1.3 Non-profit Organisations;
  - 1.1.4 public entities and other Enterprises wholly owned by organs of state;
  - 1.1.5 Public Benefit Schemes; and
  - 1.1.6 section 21 companies; and
- 1.2 specify scorecards applicable to Measured Entities subject to this statement

## **2 General principles**

- 2.1 Public entities and other Enterprises wholly owned by organs of state are incapable of evaluation of black ownership under Code series 100.
- 2.2 Higher Education Institutions are not public entities under the Public Finance Management Act of 1999. They are incapable of evaluation of black ownership under Code series 100.
- 2.3 Companies limited by guarantee and section 21 companies have no shareholding. They are incapable of evaluation of black ownership under Code series 100. This does not imply that companies limited by guarantee and section 21 companies sharing in the ownership of other Enterprises cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.
- 2.4 Non-profit Organisations and Public Benefit Organisations generally do not have any beneficial ownership and are incapable of evaluation of black ownership under Code series 100. This does not imply that Non-profit Organisations and Public Benefit Organisations sharing in the ownership of other Enterprises as broad-based ownership schemes cannot contribute towards black ownership to such Enterprises as provided for in Statement 100.
- 2.5 Wherever any of the entities listed in paragraphs 1 and 2 require evidence of their own B-BBEE compliance, they will use the Adjusted Generic Scorecard. If those entities are also Qualifying Small Enterprises, they will use the Adjusted Qualifying Small Enterprises Scorecard.



### 3 The ADJUSTED Generic Scorecard

3.1 The following table represents the Adjusted Generic Scorecard and contains the:

3.1.1 Elements of the scorecard;

3.1.2 weightings, and

3.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 – 700).

Element	Weighting	Code series reference
Management control	15 points	200
Employment equity	15 points	300
Skills development	20 points	400
Preferential procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development	15 points	700

3.2 All other terms of statement 000 apply to Measured Entities subject to this statement, mutatis mutandis.

### 4 The ADJUSTED Qualifying Small Enterprises Scorecard

4.1 The following table represents the Adjusted Generic Scorecard and contains the:

4.1.1 Elements of the scorecard;

4.1.2 weightings, and

4.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 – 700).

Element	Weighting	Code series reference
Management control	25 points	200
Employment equity	25 points	300
Skills development	25 points	400
Preferential procurement	25 points	500
Enterprise Development	25 points	600
Socio-Economic Development	25 points	700

4.2 A Measured Entity, subject to this statement, that is a Qualifying Small Enterprise must choose any four of the six Elements of B-BBEE against which their B-BBEE compliance will be measured under the Adjusted Qualifying Small Enterprise Scorecard.

### 5 Important Clarification

The status of Socio-Economic Development Contributions made to any of the types of entities in paragraphs 1 and 2 under Code series 700 is not dependent on such entity's scorecard result, but rather the nature of the contribution itself and the identity of that contribution's beneficiaries.

## Appendix 3

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*Annexe 100(B)*

### **RULES ON CERTAIN TYPES OF ENTERPRISES**

#### **1 Rules for Broad-Based Ownership Schemes:**

- 1.1 The following rules apply to Broad-Based Ownership Schemes:
- 1.1.1 the Management Fees of the scheme must not exceed 15%;
  - 1.1.2 the constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application;
  - 1.1.3 at least 85% of the value of benefits allocated by the scheme must accrue to black people;
  - 1.1.4 at least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme;
  - 1.1.5 at least 50% of the fiduciaries of the scheme must be black people and at least 25% must be black women;
  - 1.1.6 the chairperson of the scheme must be independent; and
  - 1.1.7 on the winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to beneficiaries or an entity with similar objectives.

#### **2 Rules for Employee Share Ownership Schemes:**

- 2.1 The following rules apply to Employee Share Ownership Schemes (ESOP):
- 2.1.1 the scheme constitution must define the Participants and the proportion of their claim to receive distributions;
  - 2.1.2 a written record of the name of the Participants or the use of a defined class of natural person satisfies the requirement for identification;
  - 2.1.3 a written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit; and
  - 2.1.4 the fiduciaries of the scheme must have no discretion on the above mentioned terms, and
- 2.2 The Participants must take part in:
- 2.2.1 appointing at least 50% of the fiduciaries of the scheme;
  - 2.2.2 managing the scheme at a level similar to the management role of shareholders in a company having shareholding;
  - 2.2.3 the constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar; and

2.2.4 All accumulated Economic Interest of the scheme is payable to the Participants at the earlier of a date or event specified in the scheme constitution or on the termination or winding-up of the scheme; and

2.2.5 the scheme fiduciaries must present the financial reports of the scheme to Participants yearly at an annual general meeting of the scheme.

### **3 Rules for Trusts**

3.1 The qualification criteria for the recognition of Trusts is as follows:

3.1.1 The trust deed must define the beneficiaries and the proportion of their entitlement to receive distributions;

3.1.2 A written record of the names of the beneficiaries or the use of a defined class of natural person satisfies the requirement for identification;

3.1.3 A written record of fixed percentages of entitlement or the use of a formula for calculating entitlement satisfies the need for defining proportion of benefit; and

3.1.4 The trustees must have no discretion on the above mentioned terms; and On winding-up or termination of the trust, all accumulated Economic Interest must be transferred to the beneficiaries or to an entity representing the interest of the participants or class of beneficiaries.

### **4 Additional Criteria Applicable to Trusts:**

4.1 For a Measured Entity to obtain the maximum points on it's Ownership scorecard from shareholding by a Trust, the Measured Entity must be in possession of a certificate issued by a competent person to the effect:

4.1.1 That the Trust was created for a legitimate commercial reason which must be fully disclosed, and;

4.1.2 That the terms of Trust do not directly or indirectly seek to circumvent the provisions of the Codes and the Act.

### **5 Additional Criteria Applicable to Broad Based Ownership Schemes and Employee Ownership Schemes:**

5.1 For a Measured Entity to obtain the maximum points on it's ownership scorecard, the following additional requirements must be met by a Broad-Based Scheme or Employee Share Ownership Scheme:

5.1.1 a track-record of operating as a Broad-Based Ownership Scheme or Employee Share Ownership Scheme, or in the absence of such a track-record demonstrable evidence of full operational capacity to operate as a Broad-Based Ownership Scheme or Employee Share Ownership Scheme;

5.1.2 Operational capacity must be evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises and all other necessary requirements for operating a business.

Appendix 4

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Annexe 400A - Learning Programme Matrix

Cat	Narrative Description	Delivery Mode	Learning Site	Learning Achievement
A	Institution-based theoretical instruction alone - formally assessed by the institution	Institutional instruction	Institutions such as universities and colleges, schools, ABET providers	Recognised theoretical knowledge resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning
B	Institution-based theoretical instruction as well as some practical learning with an employer or in a simulated work environment - formally assessed through the institution	Mixed mode delivery with institutional instruction as well as supervised learning in an appropriate workplace or simulated work environment	Institutions such as universities and colleges, schools, ABET providers and workplace	Theoretical knowledge and workplace experience with set requirements resulting in the achievement of a degree, diploma or certificate issued by an accredited or registered formal institution of learning
C	Recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification - formally assessed by a statutory occupational or professional body	Structured learning in the workplace with mentoring or coaching	Workplace	Occupational or professional knowledge and experience formally recognised through registration or licensing
D	Occupationally-directed instructional and work-based learning programme that requires a formal contract - formally assessed by an accredited body	Institutional instruction together with structured, supervised experiential learning in the workplace	Institution and workplace	Theoretical knowledge and workplace learning, resulting in the achievement of a South African Qualifications Authority registered qualification, a certificate or other similar occupational or professional qualification issued by an accredited or registered formal institution of learning
E	Occupationally-directed instructional and work-based learning programme that does not require a formal contract - formally assessed by an accredited body	Structured, supervised experiential learning in the workplace which may include some institutional instruction	Workplace and some institutional as well as ABET providers	Credits awarded for registered unit standards
F	Occupationally-directed informal instructional programmes	Structured information sharing or direct instruction involving workshops, seminars and conferences and short courses	Institutions, conferences and meetings	Continuing professional development, attendance certificates and credits against registered unit standards (in some instances)
G	Work-based informal programmes	Informal training	Workplace	Increased understand of job or work context or improved performance or skills

Appendix S

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Annexe 600(A) – Benefit Factor Matrix

Qualifying Contribution type	Contribution Amount	Benefit Factor
<b>Grant and Related Contributions</b>		
Grant Contribution	Full Grant Amount	100%
Direct Cost incurred in supporting enterprise development	Verifiable Cost (including both monetary and non-monetary)	100%
Discounts in addition to normal business practices supporting enterprise development	Discount Amount (in addition to normal business discount)	100%
Overhead Costs incurred in supporting enterprise development (including people appointed in enterprise development)	Verifiable Costs (including both monetary and non-monetary)	80%
<b>Loans and Related Contributions</b>		
Interest-Free Loan with no security requirements supporting enterprise development	Outstanding Loan Amount	100%
Standard Loan to Black Owned EME and QSEs	Outstanding Loan Amount	70%
Standard Loan provided to other Beneficiary Enterprises	Outstanding Loan Amount	60%
Guarantees provided on behalf of a Beneficiary entity	Guarantee Amount	3%
Lower Interest Rate	Outstanding loan amount	Prime Rate - Actual Rate
<b>Equity Investments and Related Contributions</b>		
Minority Investment in Black Owned EME and QSEs	Investment Amount	100%
Minority Investment in Other Beneficiary Enterprises	Investment Amount	80%
Enterprise Development Investment with lower dividend to financier	Investment Amount	Dividend Rate of Ordinary Shareholders - Actual Dividend Rate of Contributor
<b>Contributions made in the form of human resource capacity</b>		
Professional services rendered at no cost and supporting enterprise development	Commercial hourly rate of professional	80%
Professional services rendered at a discount and supporting enterprise development	Value of discount based on commercial hourly rate of professional	80%
Time of employees of Measured Entity productively deployed in assisting beneficiaries	Monthly salary divided by 160	80%
<b>Other Contributions</b>		
Shorter payment periods	Percentage of invoiced amount	Percentage being 15 days less the number of days from invoice to payment

Appendix G

Annexe 700(A) - Benefit Factor Matrix

Qualifying Contribution type	Contribution Amount	Benefit Factor
Grant and Related Contributions		
Grant Contribution	Full Grant Amount	100%
Direct Cost incurred in supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Verifiable Cost (including both monetary and non-monetary)	100%
Discounts in addition to normal business practices supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Discount Amount (in addition to normal business discount)	100%
Overhead Costs incurred in supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Verifiable Costs (including both monetary and non-monetary)	80%
Contributions made in the form of human resource capacity:		
Professional services rendered at no cost supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Commercial hourly rate of professional	80%
Professional services rendered at a discount supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Value of discount based on commercial hourly rate of professional	80%
Time of employees of Measured Entity productively deployed in assisting beneficiaries and supporting socio-economic development, sector specific initiatives or Approved Socio-Economic Development Contributions	Monthly salary divided by 160	80%