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GENERAL NOTICE

NOTICE 800 OF 2012

DEPARTMENT OF TRADE AND INDUSTRY

I, **Dr Rob Davies**, Minister of Trade and Industry, hereby:

- (a) Issue for public comment, the **REVISED BROAD-BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE (THE CODES)** and the **B-BBEE TECHNICAL ASSISTANCE GUIDELINES (THE TAG)**; and
- (b) Invite interested persons and the public to submit comments within **60 days** from the date of this publication.

Interested parties are requested to forward their comments in writing for attention XZondo@thedti.gov.za and LCMadonsela@thedti.gov.za respectively or forward to the following address (es)

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Dr ROB DAVIES, MP
MINISTER OF TRADE AND INDUSTRY
DATE: 27/09/2012

GENERAL EXPLANATORY NOTE

- [] Words in bold type in square brackets indicate deletions from existing enactments
____ Words underlined with a solid line indicate insertions into existing enactments

Amendment of paragraph 3 of Code Series 000, Statement 000 – Application of the Codes

1. Paragraph 3 of Code Series 000, Statement 000 is hereby amended by:

(a) The substitution for paragraph 3.1.1 of the following paragraph –

“all organs of state and public entities **[listed in schedule 2 or schedule 3 (Parts A and C) of the Public Finance Management Act]**”.

(b) The deletion of paragraph 3.1.2.

(c) The substitution for paragraph 3.1.3 of the following paragraph –

“3.1.3 **[any enterprise]** all Measured Entities that undertake any **[business]** economic activity with [any] all organs of state or public entities;”.

(d) The insertion after paragraph 3.3 of the following paragraphs –

“3.4 Discounting of the scorecard due to non-compliance with the priority elements

3.4.1 For Measured Entities using the generic scorecard

3.4.1.1 Non-compliance with the threshold requirements for any of the following elements will result in the discounting of a Measured Entity's BEE status level:

3.4.1.1.1 Ownership:

3.4.1.1.2 Skills Development; and

3.4.1.1.3 Enterprise and Supplier Development.

3.4.1.2 The Measured Entity's B-BBEE status level will be discounted by two levels.

3.4.2 For Measured Entities using the Qualifying Small Entities scorecard

3.4.2.1 Non-compliance with the threshold requirements for the Ownership element and any of the following elements will result in the discounting of a Measured Entity's B-BBEE status level:

3.4.2.1.1 Skills Development; or

3.4.2.1.2 Enterprise and Supplier development.

3.4.2.2 The Measured Entity's B-BBEE status will be discounted by one level.

3.5 The requirement to submit data to the Department of Labour under the Employment Equity Act is only applicable to designated employers who employ 50 or more employees. Therefore despite 3.2.3, Measured Entities employing fewer than 50 employees will have the option of applying the Management and Employment Equity and Skills Development elements for QSE scorecard."

Amendment of paragraph 4 of Code Series 000, Statement 000 – Eligibility as an Exempted Micro-Enterprise

2. Paragraph 4 of Code Series 000, Statement 000 is hereby amended by:

(a) The substitution for paragraph 4.3 of the following paragraph –

“4.3 Despite paragraph 4.2, an Exempt Micro Enterprise [qualifies for a promotion to a B-BBEE Status of “Level Three Contributor” having a B-BBEE procurement recognition of 110% under paragraph 6.3 if it is – more than 50% owned by black people or 50% by black women] which is more than 50% black owned qualifies for a promotion to a B-BBEE Status of “Level Two Contributor” having a B-BBEE procurement recognition of 125%.”

(b) The insertion after paragraph 4.3 of the following paragraph, and the re-numbering of the subsequent paragraphs accordingly –

“4.4 Despite paragraphs 4.2 and 4.3, an Exempted Micro-Enterprise which is 100% black owned qualifies for a promotion to a B-BBEE Status of “Level One Contributor” having a B-BBEE procurement recognition of 135%.”

(c) The substitution for re-numbered paragraphs 4.5 and 4.6 of the following paragraphs –

“4.5 Despite paragraphs 4.2 and 4.3, Exempted Micro-Enterprises are allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to the next procurement recognition level.

4.6 [Sufficient evidence of qualification as an Exempted Micro-Enterprise is an auditor’s certificate or similar certificate issued by an accounting officer or verification agency.] An Exempted Micro Enterprise is only required to obtain a verification certificate once and will retain the awarded BEE status provided it provides, on annual basis, an accounting officer’s letter confirming

the following:

4.6.1 Annual Total Revenue of less than R10 million:

4.6.2 The level of black ownership.”

(d) The insertion after paragraph 4.6 of the following paragraph –

“ Substitution of paragraph 5 of Code Series 000, Statement 000 – Eligibility as a Qualifying Small Enterprise

3. Code Series 000, Statement 000 is hereby amended by the substitution for paragraph 5 of the following paragraph –**AND THE PUBLIC IS INVITED TO GIVE SPECIFIC INPUT ON THE TREATMENT OF BLACK QSEs**

“5.1 Any enterprise with an annual Total Revenue of between **[R5]** R10 million and **[R35]** R50 million qualifies as a Qualifying Small Enterprise.

5.2 A Qualifying Small Enterprise **[must select any four of the seven Elements of B-BBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 800. Where a Qualifying Small Enterprise does not make a selection, its four best element scores will be used for the purposes of measurement]** must comply with all the Elements of B-BBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 600.

5.3

Amendment of paragraph 6 of Code Series 000, Statement 000 – Start-up Enterprises

4. Paragraph 6 of Code Series 000, Statement 000 is hereby amended by:

(a) The substitution for paragraph 6.2 of the following paragraph –

“6.2 Start up Enterprises are deemed to have [a] the qualifying B-BBEE Status [of “Level Four Contributor having a B-BBEE procurement recognition of 100% under this paragraph] in accordance to the principles of paragraph 4 of this statement.”

(b) The substitution for paragraph 6.4 of the following paragraph –

“6.4 Despite paragraphs 6.1 and 6.2, Start-up Enterprises must submit a QSE Scorecard when tendering for any contract, or seeking any other business covered by section 10 of the Act, with a value higher than **[R5]** R10 million but less than **[R35]** R50 million. For contracts above **[R35]** R50 million they should submit the generic scorecard. The preparation of such scorecards must use annualised data.”

Amendment of paragraph 7 of Code Series 000, Statement 000 – The Elements of B-BBEE in terms of the Generic Scorecard

5. Paragraph 7 of Code Series 000, Statement 000 is hereby amended by:

(a) The deletion of paragraph 7.3

(b) The substitution for paragraph 7.4 of the following paragraph –

“7.4 The Skills Development Element, as set out in Code series **[400]** 300, measures the extent to which employers carry out initiatives designed to develop the competencies of both black employees and people.”

(c) The insertion after paragraph 7.4 of the following paragraph –

“7.5 The Enterprise and Supplier Development Element, as set out in Code series 400, measures the extent to which enterprises buy goods and services from Suppliers with strong B-BBEE procurement recognition levels and who Value-Adding Suppliers, and the extent to which enterprises carry out initiatives intended to assist and accelerate the development and sustainability of black enterprises.”

(d) The deletion of paragraphs 7.5 and 7.6.

(e) The renumbering of paragraph 7.7 as paragraph 7.6.

Amendment of paragraph 8 of Code Series 000, Statement 000 – The Generic Scorecard

6. Paragraph 8 of Code Series 000, Statement 000 is hereby amended by:

(a) The substitution for paragraph 8.1.3 of the following paragraph –

“8.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 – **[700]** 600).

(b) The substitution for the table in paragraph 8.1 of the following table –

Element	Weighting	Code series reference
Ownership	[20] <u>25</u> points	100
Management Control	[10] <u>15</u> points	200
[Employment Equity]	[15 points]	[300]
Skills Development	[15] <u>20</u> points	[400] <u>300</u>
[Preferential procurement]	[20 points]	[500]

Enterprise <u>and Supplier</u> Development	[15] 40 points	[600] 400
Socio-Economic Development [initiatives]	5 points	[700] 500

(c) The substitution of the table in paragraph 8.2 of the following table –

B-BBEE Status	Qualification	B-BBEE recognition level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥ [85] 95 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥ [75] 90 but < [85] 95 on the Generic Scorecard	110%
Level Four Contributor	≥ [65] 80 but < [75] 90 on the Generic Scorecard	100%
Level Five Contributor	≥ [55] 75 but < [65] 80 on the Generic Scorecard	80%
Level Six Contributor	≥ [45] 70 but < [55] 75 on the Generic Scorecard	60%
Level Seven Contributor	≥ [40] 55 but < [45] 70 on the Generic Scorecard	50%
Level Eight Contributor	≥ [30] 40 but < [40] 55 on the Generic Scorecard	10%
Non-Compliant Contributor	< [30] 40 on the Generic Scorecard	0%

Amendment of paragraph 9 of Code Series 000, Statement 000 – Enhanced recognition for certain categories of black people

7. Paragraph 9 of Code Series 000, Statement 000 is hereby amended by the substitution for paragraphs 9.1 and 9.2 of the following paragraphs –

“9.1 black women **[who should]** form between 40% and 50% of the beneficiaries of the relevant Elements of the Generic Scorecard;

9.2 black people with disabilities, black youth, black people living in rural areas and black unemployed people **[who must form between 2 and 3%]** form part of the beneficiaries of all Elements of the Generic Scorecard.”

Deletion of paragraphs 10, 11, and 13 of Code Series 000, Statement 000 – Framework for Accreditation of BEE Verification Agencies

8. Code Series 000, Statement 000 is hereby amended by the deletion of paragraphs 10, 11, and 13.

**CODE SERIES 100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK
ECONOMIC EMPOWERMENT**

STATEMENT 100: THE GENERAL PRINCIPLES FOR MEASURING OWNERSHIP

GENERAL EXPLANATORY NOTE

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Amendment of paragraph 2 of Code Series 100, Statement 100 – The Ownership Scorecard

1. Code Series 100, Statement 100 is hereby amended by the deletion of the table in paragraph 2 and the insertion of the following table –

BEE Element	Indicator	Description	Weighting Points	Compliance Target
Ownership	Voting Rights	Exercisable Voting Rights in the Enterprise in the hands of black people	4	25%+ 1 Vote
		Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
	Economic Interest	Economic Interest in the Enterprise to which black people are entitled	4	25%
		Economic Interest in the Enterprise to which black women are entitled	2	10%
		<i>Economic Interest of the following black natural people (designated groups) in the enterprise</i>		
		- black designated groups; - black participants in Employee Share Ownership Plan (ESOP); - black people in Broad-Based Ownership Schemes; and - black participants in Co-operatives	3	3%
		- New Entrants	2	2%
	Realisation Points	- Net Value	8	Refer to Annexe C

Amendment of paragraph 3 of Code Series 100, Statement 100 – Key Measurement Principles

2. Paragraph 3 of Code Series 100, Statement 100 is hereby amended by:

(a) The insertion after paragraph 3.1 of the following paragraph, and the renumbering of the subsequent paragraphs accordingly –

“3.2 Threshold Requirements

3.2.1 A Measured Entity must achieve a minimum of 40% of the annual Net Value targets as per Annexure 100 (C) paragraph 4 of this statement in order to avoid discounting of its overall scorecard

3.2.2 Non-compliance with the threshold targets will result in the achieved B-BBEE status level being discounted in accordance with paragraph 3.4 in statement 000.”

(b) The insertion into renumbered paragraph 3.4 of the following paragraph, and the renumbering of the subsequent paragraphs in paragraph 3.4 accordingly –

“3.4.1 A Measured Entity applying the Modified Flow-Through Principle cannot benefit from the Exclusion Principle.”

(c) The insertion after renumbered paragraph 3.5.6 of the following paragraph –

“3.5.7 A Measured Entity applying the Exclusion Principle to Mandated Investments cannot benefit from the Modified Flow-Through Principle.”

Substitution of paragraph 5 of Code Series 100, Statement 100 – Private Equity Funds

3. Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 5 of the following paragraph –

“5.1 A Measured Entity may treat any of its ownership arising from a Private Equity Fund as if that ownership were held by black people, where the Private Equity Fund meets the following criteria:

5.1.1 more than 50% of any of the Private Equity Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership, must be held by black people;

5.1.2 more than 50% of profits made by the Private Equity Fund Manager after realising any investment made by it, must by written agreement, accrue to black people;

5.1.3 the term profit in this instance is deemed as profit from the operations of the Private Equity Fund Manager and the carried interest that the Private Equity Fund Manager (and/or its associated entities, provided that more than 50% of the profits of the associated entities accrue to the Private Equity Fund Manager) receives after realising any investment made by it;

5.1.4 the Private Equity Fund Manager must be a BEE Owned Company as defined; **[and]**

5.1.5 the Private Equity Fund Manager must seek to invest more than 50% of the value of 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] under management in companies that have at least a 25% direct black shareholding using the Flow Through Principle.

5.1.6 It is accepted that the Private Equity Fund Manager can facilitate such direct

black shareholding at the time of entering into the transaction should the target company not meet the requirement of a 25% black shareholding.

5.1.7 This determination will be made at each measurement date and the status given to the Private Equity Fund Manager will be applicable for a period of 12 months.

5.2 In recognition of fact that it is currently a challenge for Private Equity Fund Managers to find companies to invest in that already have a significant black shareholding, in practice it should be allowed to achieve the 50% target over a period of time based on the formulation detailed below. (It must be noted that this formulation is in line with that of the net value calculation above). This rule will apply to all investments made after 9 February 2007. The commencement date is the later of 9 February 2007 and the date of establishment of a new fund.

5.2.1 Within one year from the commencement date, more than 5% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;

5.2.2 Within two years from the commencement date, more than 10% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;

5.2.3 From the first day of the third year and the last day of the fourth year from the commencement date, more than 20% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;

5.2.4 From the first day of the fifth year and the last day of the sixth year from the commencement date, more than 30% of the value of the funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;

5.2.5 From the first of the seventh year and the last day of the eighth year from the

commencement date, more than 40% of the value of the funds invested by the Private Equity Fund must at all times be invested in the enterprises that have a 25% direct black shareholding;

5.2.6 From the first day of the ninth year and beyond from the commencement date, more than 50% of the value of the funds invested by the Private equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding.

5.3 It should be noted that the measurement of the 50% of the value of funds invested by any Private Equity Fund that must be invested in enterprises with a 25% direct black shareholding is to be measured with reference to the cost of the investment made by the Private Equity Fund;

5.4 In the case of Private Equity Funds that were fully invested prior to 9 February 2007, investments by the fund managers will be considered as being made by black people if the Private Equity Fund Management entities meet the following criteria:

5.4.1 More than 50% of any of the Private Equity Fund Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership in a Measured Entity, must be held by black people.

5.4.2 More than 50% of the profits accruing to the Private Equity Fund Manager after realizing any investment made by it, must by written agreement, accrue to black people; and

5.4.3 Private Equity Fund Manager must be a BEE Owned Company."

Amendment of paragraph 9 of Code Series 100, Statement 100

4. Paragraph 9 of Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 9.2 of the following paragraph –

“9.2 An Equity Instrument carrying preferent rights that has the characteristics of a debt, regardless of whether the debt is that of an Enterprise or of a Participant, is an ordinary loan. If the debt is that of a black Participant, it may be subject to measurement under [Current Equity Interest] Net Value.”

Deletion of paragraphs 10 and 11 of Code Series 100, Statement 100

5. Code Series 100, Statement 100 is hereby amended by the deletion of paragraphs 10 and 11.

**Substitution of paragraph 3 of Annexe 100(C) to Code Series 100, Statement 100 –
Calculation of Deemed Net Value**

6. Paragraph 3 of Annexe 100(C) to Code Series 100, Statement 100, is hereby amended by the substitution for paragraph 3 of the following paragraph –

“3 Calculation of Deemed Net Value

In calculating the "Deemed Net Value" referred to in the formula in paragraph 4 below, the following formula applies:

Where

A is the Deemed Net Value

B for the purposes of paragraph 4 below is the value of the Equity Instruments relevant to the calculation, determined on the date of measurement

B for the purposes of paragraph 5 below is the value of the Equity Instruments relevant to the calculation, determined on the date of sale or loss

C for the purposes of paragraph 4 below is the carrying value of any acquisition

debts of the relevant black Participants on the date of measurement

C for the purposes of paragraph 5 below is the carrying value of any acquisition debts of the relevant black Participants on the date of sale or loss

D for the purposes of paragraph 4 and 5 is the value of the Measured Entity on the date of measurement

D for the purposes of paragraph 5 below the value of the Measured Entity on the date of sale or loss

D for the purposes of the exclusion principle is the value of the measurable portion of the Measured Entity on the date of measurement.”

Substitution of paragraph 5 of Annexe 100(C) to Code Series 100, Statement 100 – Calculation of the Recognition of Ownership after the Sale or Loss of Shares by Black Participants

7. Annexe 100(C) to Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 5 of the following paragraph –

“5.1 The calculations in paragraphs [3.5.1] 3.6.1 and [3.5.3] 3.6.3 use the following formula:

$$A = B \times C \times D$$

Where

A is the percentage of rights of ownership that survive the sale or loss of an Equity Instrument by a black Participant in paragraph [3.5] 3.6 of the statement

B is the percentage of rights of ownership for each of indicators in the ownership scorecard that were attributable to the black Participant immediately before his or her sale or loss

C is the Net Value percentage provided for in paragraph 0 above undertaken for the Equity Instruments sold or lost by the black Participant on the date of the sale or loss. The value of the Enterprises is measurable as at the date of [measurement] sale or loss

D is the most recently determined B-BBEE Recognition Level of the Measured Entity (which must be less than 1-year old) based on its Generic Scorecard result for all Elements other than ownership determined using statement 000.”

Deletion of paragraph 6 of Annexe 100(C) to Code Series 100, Statement 100 – The Bonus Points

8. Annexe 100(C) to Code Series 100, Statement 100 is hereby amended by the deletion of paragraph 6.

**CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK
ECONOMIC EMPOWERMENT**

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

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**Amendment of heading of Code 300, Statement 300 – the General Principles for measuring Employment
Equity**

**CODE SERIES [3]00: MEASUREMENT OF THE EMPLOYMENT EQUITY ELEMENT OF BROAD-BASED BLACK
ECONOMIC EMPOWERMENT**

**CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK
ECONOMIC EMPOWERMENT**

STATEMENT [2]00: THE GENERAL PRINCIPLES FOR MEASURING MANAGEMENT CONTROL

STATEMENT 200: the general Principles for measuring MANAGEMENT control

2. Amendment to paragraph 2 of Code 300, Statement 300 – Employment Equity Scorecard

Paragraph 2 of Code 300, Statement 300 is hereby amended by the substitution for paragraph 2.1, 2.2 ,

2.3, 2.4 and introduction of 2.5 of the following

2.1 The following table represents the indicators and method for calculating a score for Management Control under this statement:

[

Measurement Category & Criteria	Weighting points	Compliance targets	
		Years 0 – 5	Years 6 -10
2.1.1 Black Disabled Employees as a percentage of all employees	2	2%	3%
2.1.2 Black employees in Senior Management as a percentage of all such employees using the adjusted recognition for gender	5	43%	60%
2.1.3 Black employees in Middle Management as a percentage of all such employees using the adjusted recognition for gender	4	63%	75%
2.1.4 Black employees in Junior Management as a percentage of all such employees using the adjusted recognition for gender	4	68%	80%
2.1.5 Bonus points for meeting or exceeding EAP targets in each category	3		

]

<u>Measurement Category & Criteria</u>	<u>Weighting points</u>	<u>Compliance targets</u>
<u>2.1 Board Participation:</u>		
2.1.1 Exercisable voting rights of black board members as a percentage of all board members	<u>2</u>	<u>50%</u>
2.1.2 Exercisable voting rights of black female board members as a percentage of all board members	<u>1</u>	<u>25%</u>
2.1.3 Exercisable voting rights of Executive Black member of the board as a percentage of all such employees	<u>2</u>	<u>50%</u>
2.1.4 Exercisable voting rights of Executive Black female member of the board as a percentage of all such employees	<u>1</u>	<u>25%</u>
<u>2.2 Top Management:</u>		
2.2.1 Black Top management as a percentage of all such employees	<u>2</u>	<u>60%</u>
2.2.2 Black female Top management as a percentage of all such employees	<u>1</u>	<u>30%</u>
<u>2.3 Senior Management</u>		
2.3.1 Black employees in senior management as a percentage of all such employees	<u>1</u>	<u>60%</u>
2.3.2 Black female employees in senior management as a percentage of all such employees	<u>1</u>	<u>30%</u>

2.4 Middle Management		
2.4.1 Black employees in professionally qualified and experienced specialists and mid-management as a percentage of all such employees	<u>2</u>	<u>75%</u>
2.5 Disabled Employees		
2.5.1 Black disabled employees as a percentage of all employees	<u>2</u>	<u>2%</u>

2.2 The compliance targets for the 2.3 and 2.4 of the Management Control scorecard are based on the overall demographic representation of black people as defined. For scoring purposes, the targets should be further broken down into specific criteria according to the different race sub groups within the definition of black in accordance with the Employment Equity Act requirements on equitable representation and weighted accordingly.

3 Amendment of paragraph 3 of Code 200, Statement 200 – Common Examples of Top Management

Paragraph 3 of Code 200, Statement 200 is hereby deleted:

[The inclusion of the following examples of Top Management is for guidance purposes only

3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, and the chief financial officer and other people holding similar positions.

3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, the head of human resources and other people holding similar positions.]

4 Amendment of paragraph 4 of Code 200, Statement 200 – Key Measurement Principles

Paragraph 4 of Code 200, Statement 200 is hereby amended as follows:

4.3 A Measured Entity receives points by meeting the targets for participation of black people and black women at Board, Top Management, Senior Management, Middle Management level, and Black Employees with disabilities [and Top Management level]. 4.2 A Measured Entity must use the data in calculating its score under the Management Control scorecard used in its returns filed with the Department of Labour under the Employment Equity Act. This does not apply to Measured Entities exempt from filing such returns. **Measured Entity that does not distinguish between Top Management and Senior Management may include its Senior Management under this statement. If a Measured Entity adopts this approach –**

4.3.1 the corresponding targets for Senior Management in Code series 300 will apply to the Management Control scorecard;

4.3.2 Senior Management included in this statement are not measurable under statement 300.]

4.4 If a Measured Entity does not distinguish between [Senior Top] Top Management and [Other Top] Senior Management, then Top Management is measurable as a single indicator with a Weighting of 5 points under paragraphs 2.2 and 2.3 [2.2.1 and 2.2.2].

5 Amendment of paragraph 5 of Code 200, Statement 200 – Calculating the Adjusted Recognition for

Gender

Paragraph 5 of Code 200, Statement 200 is hereby deleted

[CALCULATING THE ADJUSTED RECOGNITION FOR GENDER]

The Adjusted Recognition for Gender is calculated in terms of the formula "A" in Annex 200(A)]

6. AMENDMENT OF PARAGRAPH 6 OF CODE 200, STATEMENT 200- CALCULATING COMPLIANCE

Amendment of paragraph 6 of code 200, statement 200 is hereby amended as follows:

6.1 The criteria in the Management Control scorecard are measured in terms of formula [B] "A" set out in Annex [3] 200 (A).

5 ANNEXE 200(A)

Amendment of Annexe 200 (A) of Code 200, Statement 200 – Calculating the Adjusted Recognition for Gender

The Adjusted Recognition for Gender formula of Code 200, Statement 200 is hereby amended by the deletion of the following:

[A: CALCULATING THE ADJUSTED RECOGNITION FOR GENDER]

The calculation of the Adjusted Recognition for Gender is as follows:

$A = \frac{B}{2} + C$
C is limited to a maximum of 50% of the target Where A is the Adjusted Recognition for Gender B is the percentage of employees in the measurement category that are black people C is the percentage of employees in the measurement category that are black women

]

B: Amendment of Annexe 200 (B)- Calculating Compliance

Amendment of Annexe 200 (B) of Code 200, Statement 200 – Measurement of the Management Control Criteria

CALCULATING COMPLIANCE

The calculation of the management indicators provided for in paragraphs 2.1.1, 2.1.2., 2.2.1 and 2.2.2 is as follows:

$$A = \frac{B}{C} \times D$$

C is limited to 50% of the target

Where

A is the score for measured management indicator

B is the Adjusted Recognition for Gender calculated in paragraph 5

C is the target for that measurement category as per paragraph 2

D is the Weighting for measured indicator as per paragraph 2

$$A = \frac{B}{C} \times D$$

C: The calculation of the management indicator provided for in paragraph 2.3 is as follows:

Where

A is the score for the management indicator in paragraph 2.3 of the number of black Independent Non-Executive Board Members of the Measured Entity as a percentage of the total number of Independent Non-Executive Board Members of the Measured Entity

C is the target for Independent Non-Executive Board Members of the Measured Entity in paragraph

D is the Weighting points in paragraph 2.3

C: CALCULATING COMPLIANCE

Introduction of Annexe 200 (C) of Code 200, Statement 200 – Calculating Compliance

The Calculating Compliance formula of Code 200, Statement 200 is hereby amended by the inclusion of the following

The calculation of the Management Control indicators provided for in paragraphs 2.3 and 2.4 as follows:

$$A = \left(\frac{\frac{AM}{C} + \frac{CM}{C} + \frac{IM}{C} + \frac{AF}{C} + \frac{CF}{C} + \frac{IF}{C}}{6} \right) \times D$$

For each indicator

Where

A is the score for each occupational level as measured in the Management Control Scorecard

AM is the percentage of employees in the measurement category that are African Males

CM is the percentage of employees in the measurement category that are Coloured Males

IM is the percentage of employees in the measurement category that are Indian Males

AF is the percentage of employees in the measurement category that are African Females

CF is the percentage of employees in the measurement category that are Coloured Females

IF is the percentage of employees in the measurement category that are Indian Females

C is the target for that measurement sub-category as per paragraphs 2.1.1, 2.2.1, 2.3.1, 2.4.1, 2.5.1.

D is the overall target for all black people as per paragraphs 2.1.1, 2.2.1, 2.3.1, 2.4.1, 2.5.1. a

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

___ Words underlined with a solid line indicate insertions into existing enactments

Substitution of the title of Code Series 400, Statement 400

1. The title of Code Series 400, Statement 400 (hereinafter 'Code Series 300, Statement 300') is hereby substituted with the following title –

**“CODE SERIES [400] 300: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT
OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT
STATEMENT [400] 300: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF
BROAD-BASED BLACK ECONOMIC EMPOWERMENT”**

Substitution of paragraph 2 of Code Series 300, Statement 300 – The Skills Development Scorecard

2. Code Series 300, Statement 300 is hereby amended by the substitution for paragraph 2 of the following paragraph –

“2.1 The following table represents the criteria used for deriving a score for Skills Development under this statement:

<u>Measurement Category & Criteria</u>	Weighting points	Compliance targets
2.1.1 Skills Development Expenditure on [learning programmes] <u>any program specified in the Learning Programme Matrix for black people as a percentage of Levia</u> <u>ble Amount</u>		
2.1.1.1 Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees as a percentage of Levia ble Amount [using the Adjusted Recognition for Gender]	<u>8</u> [6]	[3%]<u>6%</u>

2.1.1.2 Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of Leviable Amount [using the Adjusted Recognition for Gender]	<u>4</u> [3]	<u>0.3%</u>
2.1.2 Learnerships, Apprenticeships, and Internships:		
2.1.2.1 <u>Number of black [employees] people participating in Learnerships [or Category B, C and D Programmes], Apprenticeships, or Internships as a percentage of total employees [using the Adjusted Recognition for Gender]</u>	<u>4</u> [6]	<u>2.5%</u> [5%]
2.1.2.2 <u>Number of unemployed black people participating in Learnerships, Apprenticeships, and Internships as a percentage of total employees</u>	<u>4</u>	<u>2.5%</u>
<u>Bonus points:</u>		
2.1.3 <u>Number of black people absorbed by the Measured and industry Entity at the end of the Learnerships programme</u>	<u>5</u>	<u>100%</u>

2.2 The compliance targets for the Skills Development scorecard are based on the overall demographic representation of black people as defined. These targets should be further broken down into specific criteria according to the different race sub groups within the definition of black people in accordance with the Employment Equity Act requirements on equitable representation.

2.3 The Weighting points in the Skills Development scorecard represent the maximum number of points possible for each of the criteria.

2.4 Threshold requirements

2.4.1 A Measured Entity must achieve a minimum of 40% of the target set out in the skills development scorecard in order to avoid discounting of its overall scorecard

2.4.2 Non-compliance with the threshold targets will result in the achieved BEE status level being discounted in accordance with paragraph 3.4 in statement 000."

Amendment of paragraph 3 of Code Series 300, Statement 300 – Key Measurement Principles

3. Paragraph 3 of Code Series 300, Statement 300 is hereby amended by:

(a) The substitution for paragraph 3.1 of the following paragraph –

"3.1 Measured Entities receive points on the Skills Development scorecard only if:

3.1.1 **[they are in compliance with the requirements of the Skills Development Act and the Skills Development Levies Act]** they have developed the following SETA approved documents: Workplace Skills Plan, an annual training report and pivotal report; and

3.1.2 **[they have registered with the applicable SETA]** they have implemented programmes targeted at developing Priority Skills generally, and specifically, for black people. [

3.1.3 **they have developed a Workplace Skills Plan; and**

3.1.4 **they have implemented programmes targeted at developing Priority Skills generally, and specifically, for black employees]**".

(b) The deletion of paragraphs 3.3, 3.5 and 3.7.

- (c) The renumbering of paragraphs 3.4 and 3.6 as paragraphs 3.3 and 3.4.
- (d) The insertion after renumbered paragraph 3.4 of the following paragraph –

“3.5 General Principles

- 3.5.1 Contribute to the achievement of the country’s economic growth and social development goals by developing skills that will enrich the creation of decent work and sustainable livelihoods**
- 3.5.2 Promote the development of an industrial skills base in critical sectors of production and value-added manufacturing, which are largely labour-intensive industries**
- 3.5.3 Support ‘Professional, Vocational, Technical and Academic Learning’ programmes, achieved by means of professional placements, work-integrated learning, apprenticeships, learnerships and internships, that meet the critical needs for economic growth and social development.**
- 3.5.4 Strengthen the skills and human resource base by encouraging the support of skills development initiatives with an emphasis on skills development and career pathing for all working people in order to support employment creation.”**

Deletion of paragraph 4 of Code Series 300, Statement 300

- 4. Code Series 300, Statement 300 is hereby amended by the deletion of paragraph 4.

Deletion of paragraph 6 of Code Series 300, Statement 300

- 5. Code Series 300, Statement 300 is hereby amended by the deletion of paragraph 6.

Substitution of Annexe 400A of Code Series 300, Statement 300

6. Code Series 300, Statement 300 is hereby amended by the substitution for Annexe 400A and 400B of the following Annexe –

“Annexe **[400A]** 300A – Learning Programme Matrix

Cat	<u>Programme</u>	Narrative Description	Delivery Mode	Learning Site	Learning Achievement
A	<u>Bursaries</u>	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	<u>Internships</u>	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	<u>Learnerships</u>	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	<u>Learnerships or Apprenticeships</u>	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
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E	<u>Work-integrated learning</u>	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, institutional as well as ABET providers	Credits awarded for registered unit standards, continued professional development, improved performance or skills <u>(e.g. evidence of outputs based on Performance Development Programme)</u>
[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]”
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Amendment of Annexe 400B

7. Annexe 400B of Code Series 300, Statement 300 is hereby renamed Annexe 300B, and is hereby further amended by:

(a) The deletion of Part A and the insertion of the following part –

“A: Calculating Compliance

The calculation of the Skills Development indicators provided for in paragraph 2.1.1 and 2.1.2 as follows:

$$A = \left(\frac{\frac{AM}{C} + \frac{CM}{C} + \frac{IM}{C} + \frac{AF}{C} + \frac{CF}{C} + \frac{IF}{C}}{6} \right) \times D$$

For each indicator

Where

A is the score for any given criteria referred to in the scorecard under statement 300.

AM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are African Males

CM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Coloured Males

IM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Indian Males

AF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are African Females

CF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Coloured Females

IF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Indian Females

C is the target for the applicable criteria as referred to in the scorecard under statement 300.

D is the Weighting for the applicable criteria as referred in the scorecard under statement 300.”

(b) The substitution for Part B of the following part –

“B: Measurement of Criteria 1.1.2 of the Skills Development Indicators

This formula explains the method of measurement of the criteria in the Skills Development scorecard:

$$A = \frac{B}{C} \times D$$

Where

A is the score for the given criteria as referred to in paragraph 2.1.1.2 of the scorecard under statement **[400] 300**

B is the [**Adjusted Recognition for Gender calculated under the calculation of the adjusted recognition for gender**] percentage of spend in the measurement category that are black disabled people

C is the target for the applicable criteria as referred to in the scorecard under statement **[400] 300**

D is the Weighting for the applicable criteria as referred in the scorecard under statement **[400] 300”**

(c) The insertion after Part B of the following part –

"C: Measurement of Criteria 1.2.3 for the absorption of learners

$$\underline{A = \left(\frac{E}{L + A + I} \right) \div C \times D}$$

For each indicator

Where

A is the score for the absorption criteria referred to in the scorecard under statement 300.

E is the number of section 18.2 learners employed post training and section 18.2 apprentices, and interns currently contracted in a training programme of 3 to 4 years

L is representative of the learnership programme

A is representative of the apprenticeship programme

I is representative of the internship programme

C is the target for the absorption criteria as referred to in the scorecard under statement 300

D is the Weighting for the applicable criteria as referred in the scorecard under statement 300."

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

____ Words underlined with a solid line indicate insertions into existing enactments

Substitution of title of Code Series 500, Statement 500

1. Code Series 500, Statement 500 (hereinafter 'Code Series 400, Statement 400') is hereby amended by the substitution for the title of the following title –

**“CODE SERIES [500] 400: MEASUREMENT OF THE [PREFERENTIAL PROCUREMENT]
ENTERPRISE AND SUPPLIER DEVELOPMENT ELEMENT OF BROAD-BASED BLACK
ECONOMIC EMPOWERMENT
STATEMENT [500] 400: THE GENERAL PRINCIPLES FOR MEASURING
[PREFERENTIAL PROCUREMENT] ENTERPRISE AND SUPPLIER DEVELOPMENT”**

Substitution of paragraph 1 of Code Series 400, Statement 400 – Objectives of this Statement

2. Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 1 of the following paragraph –

“The objectives of this statement are to specify:

- 1.1 **[the Preferential Procurement scorecard] the Enterprise and Supplier Development focus areas, namely:**

- 1.1.1 Preferential Procurement; and

- 1.1.2 Enterprise and Supplier Development;

- 1.2 the scorecard for measuring Enterprise and Supplier Development;

- 1.3 the key measurement principles applicable to calculating Preferential

Procurement contributions to B-BBEE [;] and Qualifying Enterprise Development Contributions;

- 1.4 principles applicable when calculating B-BBEE Procurement Spend [;] and Enterprise Development Spend; and
- 1.5 the formula for calculating the individual criteria specified in the [Preferential Procurement] Enterprise and Supplier Development scorecard.”

Substitution of paragraph 2 of Code Series 400, Statement 400 – Preferential Procurement Scorecard

3. Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 2 of the following paragraph –

“2 [Preferential Procurement] Enterprise and Supplier Development Scorecard

The following table represents the criteria for deriving a score for [Preferential Procurement] Enterprise and Supplier Development under this Statement:

Criteria	Weighting points	Compliance targets
2.1 <u>PREFERENTIAL PROCUREMENT</u>		
2.1.1 B-BBEE Procurement Spend from all <u>Value-Adding Suppliers</u> based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	[12] 8	[70%] 80%
2.1.2 B-BBEE Procurement Spend from <u>Value-Adding</u> Qualifying Small Enterprises or Exempted Micro-Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	[3] 4	[20%] 30%

2.1.2.1 B-BBEE Procurement Spend from <u>Value-Adding Suppliers</u> that are >50% black owned; and	[3] 9	[12%] 40%
2.1.2.2 B-BBEE Procurement Spend from <u>Value-Adding Suppliers</u> that are >30% black women owned.	[2] 4	[8%] 12%
2.2 ENTERPRISE AND SUPPLIER DEVELOPMENT		
2.2.1 <u>Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target.</u>	10	2% of NPAT
2.2.2 <u>Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.</u>	[15] 5	1% of NPAT
<u>2.3 Bonus points for the following (during measured period)</u>		
2.3.1 <u>New venture created (to become a value adding supplier)</u>	1	
2.3.2 <u>Graduation from Enterprise Development to supplier development beneficiary</u>	1	
2.3.3 <u>Jobs created by supported supplier from Enterprise Development to Supplier Development (a multiplier of 1.25)</u>	1	

2.4 Enterprise and Supplier Development Contributions will be recognised as a percentage of annual Net Profit After Tax (NPAT)

2.5 Threshold Requirements

2.5.1 A Measured Entity must achieve a minimum of 40% of the targets set out on 2.1.1, 2.2.1 and 2.2.2 of the Enterprise and Supplier Development Scorecard in order to avoid discounting of its overall scorecard

2.5.2 Non-compliance with the sub-minimum targets will result in the achieved BEE status level being discounted in accordance with paragraph 3.4 in statement 000."

Amendment of paragraph 3 of Code Series 400, Statement 400 – Key Measurement Principles

4. Paragraph 3 of Code Series 400, Statement 400 is hereby amended by:

(a) The substitution for paragraph 3.1 of the following paragraph –

“3.1 The weighting points in the **[Preferential Procurement]** Enterprise and Supplier Development scorecard represent the maximum number of points possible for each of the criteria.”

(b) The substitution for paragraphs 3.3 and 3.4 of the following paragraphs –

“3.3 If a Measured Entity procures goods and services from a Supplier that is:

3.3.1 a recipient of enterprise development contributions from the Measured Entity under Code series **[5]400**, and/or a black QSE or EME that has a minimum 3 year contract with the Measured Entity, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.2; and

3.3.2 a **[Value Adding Enterprise]** New Enterprise, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.25.

3.4 This statement applies to all areas of procurement **[.]** enterprise and supplier development.”

(c) The insertion after paragraph 3.4 of the following paragraph –

“3.5 General Principles

3.5.1 To strengthen local procurement in order to help build South Africa's industrial base in critical sectors of production and value adding

manufacturing, which are largely labour-intensive industries.

- 3.5.2 To increase local procurement through capacity building achieved by incentivising appropriate local supplier development programmes by businesses supplying imported goods and services.
- 3.5.3 To actively support procurement from black owned QSEs and EMEs by identifying opportunities to increase procurement from local suppliers in order to support employment creation.
- 3.5.4 To support procurement from black owned and black women owned businesses in order to increase the participation of these businesses in the main stream economy.
- 3.5.5 To promote the use of black owned professional service providers and entrepreneurs as suppliers.
- 3.5.6 Measured Entities receive recognition for any Enterprise and Supplier Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.
- 3.5.7 Measured Entities are encouraged to align their Enterprise and Supplier Development initiatives with the designated sectors of government's localisation and valued adding programmes.
- 3.5.8 Measured Entities are encouraged to align their enterprise and supplier development initiatives with their supply chain requirements thereby linking Enterprise and Supplier Development with preferential procurement.
- 3.5.9 Qualifying Enterprise and Supplier Development Contributions of any Measured Entity are recognisable on an annual basis.
- 3.5.10 No portion of the value of any Qualifying Enterprise and Supplier

Development Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement.

3.5.11 Measured Entities receive points on the Enterprise and Supplier Development scorecard only if they have fulfilled the requirement to demonstrate that they have developed an Enterprise and Supplier Development plan for Qualifying Beneficiaries. This plan should include:

3.5.11.1 Clear objectives;

3.5.11.2 Priority interventions;

3.5.11.3 Key performance indicators; and

3.5.11.4 A concise implementation plan with clearly articulated milestones.”

Deletion of paragraph 4 of Code Series 400, Statement 400 – Black Owned Professional Service Providers and Entrepreneurs

5. Code series 400, Statement 400 is hereby amended by the deletion of paragraph 4.

Amendment of paragraph 5 of Code Series 400, Statement 400 – Total Measurement Procurement Spend

6. Paragraph 5 of Code Series 400, Statement 400 is hereby amended by:

(a) The substitution for paragraph 5.4 of the following paragraph –

“5.4 *Public Sector Procurement:*

5.4.1 all goods and services procured from organs of state and public

entities[listed in Schedules 2 and 3 to the Public Finance Management Act]. Despite this, procurement by a Measured Entity from a local government authority, which is a reseller of that service, is measurable at the B-BBEE Recognition Level of the primary Supplier of the service;

5.4.2 in any event, any procurement of any goods or services from any organ of state or public entity that enjoys a statutory or regulated monopoly in the supply of such goods or services, is excluded;”

(b) The substitution for paragraph 5.10 of the following paragraph –

“5.10 *Empowerment related expenditure*: all goods and services procured in carrying out B-BBEE. The Total Measured Procurement Spend does not include the actual contribution portion recognised under Code series 500 or 600 [or 700] but does include any expenditure incurred in facilitating those contributions;”

(c) The substitution for paragraph 5.12 of the following paragraph –

“5.12 *Intra-group procurement*: **[except as provided in statement 002]** all goods and services procured from subsidiaries or holding companies of the Measured Entity. (BEE credentials of the entity supplying goods and/or services must be confirmed by way of a valid BEE certificate).”

Amendment of paragraph 6 of Code Series 400, Statement 400 – Exclusions from Total Measured Procurement Spend

7. Paragraph 6 of Code Series 400, Statement 400 is hereby amended by:

(a) The substitution for the heading of the following heading –

“6 Exclusions from Total Measured Procurement Spend

The following list **[is the only]** provides permissible exclusions from Total Measurement Procurement Spend recognisable in terms of paragraph 5:”

(b) The deletion of paragraph 6.2.

(c) The substitution for paragraph 6.5.2 of the following paragraph –

“6.5.2 investments, loans or donations qualifying for recognition under any statement under Code series **[600 or 700]** 400 or 500”.

(d) The deletion of paragraph 6.6.

Amendment of paragraph 7 of Code Series 400, Statement 400 – Measurement of B-BBEE Procurement Spend

8. Paragraph 7 of Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 7.2 of the following paragraph –

“7.2 B-BBEE Procurement Spend can be measured in terms of formula “A” in Annexe **[500(A)]** 400(A).”

Amendment of paragraph 8 of Code Series 400, Statement 400 – The Calculation of Preferential Procurement Contributions to B-BBEE

9. Paragraph 8 of Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 8.2 of the following paragraph –

“8.2 The Measured Entity’s score for Preferential Procurement contributions to B-BBEE under the preferential procurement scorecard can be calculated in terms of formula “B” in Annexe **[500(A)]** 400(A).”

Insertion of paragraphs 9, 10 and 11 into Code Series 400, Statement 400

10. Code Series 400, Statement 400 is hereby amended by the insertion after paragraph 8 of the following paragraphs:

“9 ENTERPRISE AND SUPPLIER DEVELOPMENT CONTRIBUTIONS

9.1 The following is a non-exhaustive list of Recoverable Enterprise and Supplier Development Contributions:

- 9.1.1 investments in beneficiary entities;**
- 9.1.2 loans made to beneficiary entities;**
- 9.1.3 guarantees given or security provided on behalf of beneficiaries;**
- 9.1.4 credit facilities made available to beneficiary entities;**
- 9.1.5 The following is a non-exhaustive list of Non-recoverable Enterprise and Supplier Development Contributions:**
- 9.1.6 grant Contributions to beneficiary entities;**
- 9.1.7 direct costs incurred by a Measured Entity in assisting and hastening development of beneficiary entities;**
- 9.1.8 overhead costs of a Measured Entity directly attributable to Enterprise and Supplier Development Contributions;**
- 9.1.9 preferential credit terms granted by a Measured Entity to beneficiary entities;**
- 9.1.10 preferential terms granted by a Measured Entity in respect of its supply of goods or services to beneficiary entities;**
- 9.1.11 contributions made to settling service costs relating to the operational or financial capacity or efficiency levels of beneficiary entities;**
- 9.1.12 payments made by the Measured Entity to suitably qualified and experienced third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf;**
- 9.1.13 discounts given to beneficiary entities in relation to the acquisition and maintenance costs associated with the grant to those beneficiary entities of franchise, licence, agency, distribution or other similar business rights;**
- 9.1.14 the creation or development of capacity and expertise for beneficiary entities needed to manufacture or produce goods or services previously not manufactured, produced or provided in the Republic of South Africa is**

provided for in Government's economic growth and local supplier development policies and initiatives;

9.1.15 facilitating access to credit for beneficiary entities without access to similar credit facilities through traditional means owing to a lack of credit history, high-risk or lack of collateral;

9.1.16 provision of training or mentoring by suitably qualified entities or individuals to beneficiary entities which will assist the beneficiary entities to increase their operational or financial capacity; and

9.1.17 the maintenance by the Measured Entity of an Enterprise and Supplier Development unit which focuses exclusively on support of beneficiary entities or candidate beneficiary entities.

9.1.18 New projects promoting beneficiation by the Measured Entity for the benefit of Enterprise and Supplier Development Beneficiaries.

9.1.19 Provision of preferential credit facilities to a beneficiary entity by a Measured Entity may constitute an Enterprise and Supplier Development Contribution. Examples of such contributions include without limitation:

9.1.20 provision of finance to beneficiary entities at lower than commercial rates of interest;

9.1.21 relaxed security requirements or absence of security requirements for beneficiary entities unable to provide security for loans; and

9.1.22 settlement of accounts with beneficiary entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided the shorter period is no longer than 15 days;

9.1.23 providing training or mentoring to beneficiary communities by a Measured Entity. (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the Measured Entity in carrying out such initiatives. A clear justification, commensurate with the seniority and expertise of the trainer or mentor, must support any claim for time costs incurred).

9.1.24 Maintaining an Enterprise and Supplier Development unit by the Measured Entity. (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting or implementing Enterprise and Supplier Development constitute contributions.)

9.1.25 Payments made by the Measured Entity to suitably qualified and experienced third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf.

Insertion of paragraph 10 under Code 400, Statement 400 – Monetary and Non-monetary Contributions**10 MONETARY AND NON-MONETARY CONTRIBUTIONS**

- 10.1 Subject always to the definition of Qualifying Enterprise and Supplier Development Contributions, the following monetary/non-monetary contributions will, without limitation, be considered:
- 10.1.1 the provision of seed or development capital;
 - 10.1.2 contributions made towards the settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a Qualifying Enterprise and Supplier Development Beneficiary including, without limitation:
 - 10.1.2.1 professional and consulting services;
 - 10.1.2.2 licensing and/or registration fees;
 - 10.1.2.3 industry specific levies and/or other such fees; and
 - 10.1.2.4 IT services;
 - 10.1.3 payments made by the Measured Entity to third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf;
 - 10.1.4 subject to paragraph 4.2, creation or development of capacity and expertise for Beneficiary Entities required to manufacture or produce goods and/or services previously not manufactured, produced or provided in the Republic of South Africa;
 - 10.1.5 subject to paragraph 4.3, provision of preferential credit facilities;
 - 10.1.6 subject to paragraph 4.2, facilitation of access to credit for Beneficiary Entities unable to access similar credit facilities through traditional means owing to a lack of credit history, high risk and/or lack of collateral;
 - 10.1.7 subject to paragraph 4.4, provision of training and/or mentoring to Beneficiary Entities which will assist the Beneficiary Entities to increase their operational and/or financial capacity; and
 - 10.1.8 subject to paragraph 4.5, the maintenance by the Measured Entity of an Enterprise and Supplier Development unit which focuses exclusively on support of Beneficiary Entities or candidate Beneficiary Entities.
- 10.2 The creation and/or development of the capacity of Beneficiary Entities which will enable them to manufacture and produce goods and/or provide services previously not available in the Republic of South Africa, may constitute a Qualifying Enterprise and Supplier Development Contribution, and will be measured as the rand value of monetary contributions made as well as investments into, loans made to or guarantees given for a Beneficiary Entity.
- 10.3 Provision of preferential credit facilities to a Beneficiary Entity by a Measured Entity may

constitute a Qualifying Enterprise and Supplier Development Contribution. Examples of such contributions include without limitation:

- 10.3.1 provision of finance to Beneficiary Entities at rates of interest below the applicable rate. Such contributions will be measured as the value of the differential between the actual interest rate provided to the Beneficiary Entity and the applicable rate;
 - 10.3.2 relaxed security requirements or absence of security requirements for Beneficiary Entities unable to provide security for loans. Such contributions shall be measured as being 3% (three percent) of any positive differential between the initial capital value of the loan and the value of security taken; and
 - 10.3.3 settlement of accounts with Beneficiary Entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided that the shorter period is no longer than 15 days. Preferential payment terms which extend beyond 15 days will not qualify as Qualifying Enterprise and Supplier Development Contributions;
- 10.4 Provision of training and/or mentoring to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise and Supplier Development Contribution. Such contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not be included in this cost. Furthermore, a clear justification must be supplied with respect to the calculation of such time costs incurred, commensurate with the level of seniority and expertise of the trainer or mentor. Common forms of such contribution include without limitation:
- 10.4.1 Professional and consulting services;
 - 10.4.2 IT services; and
 - 10.4.3 any other services which help to increase the entity's financial and/or operational capacity and which have not also been accounted for under skills development.
- 10.5 The maintenance of an Enterprise and Supplier Development unit by the Measured Entity may constitute a Qualifying Enterprise and Supplier Development Contribution. Common examples of such contributions include without limitation the salaries and wages of staff and other expenses involved in the operation of such Enterprise and Supplier Development unit. Notwithstanding the foregoing, only that portion of salaries and wages which relate to time spent by the staff in and the other expenses related to the promotion and implementation of Enterprise and Supplier Development in respect of Beneficiary Entities or candidate Beneficiary Entities should be taken into consideration under Enterprise and Supplier Development contributions.
- 10.6 Payments made by the Measured Entity to third parties to perform Enterprise and Supplier Development initiatives on the Measured Entity's behalf may constitute a Qualifying Enterprise and Supplier Development Contribution.

Insertion of paragraph 11 under Code 400, Statement 400 – Measurement of Enterprise and Supplier Development Contributions

11 MEASUREMENT OF ENTERPRISE AND SUPPLIER DEVELOPMENT CONTRIBUTIONS

11.1 Qualifying Contributions are measurable using the formula "A" in Annexe 400(B)

ANNEXE [5] 400 (A)**A: B-BBEE PROCUREMENT SPEND:**

$A = \text{the sum of } (B \times C)$
Where A is the calculated total B-BBEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of B and C for each Supplier of the Measured Entity not excluded under the exclusion from total measured procurement spend; B is the value of procurement falling within Total measured procurement spend and not excluded under the exclusion from total measured procurement spend from each Supplier of the Measured Entity; C is the B-BBEE Procurement Recognition Level of each such Supplier of the Measured Entity.

B: THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO B-BBEE:

$A = \frac{B}{C} \times D$
Where A is the calculated preferential procurement score for 2.1.1, 2.1.3, 2.1.4 and 2.1.5 in the scorecard under statement [5] 400 for the Measured Entity; B is the total B-BBEE Procurement Spend of the Measured Entity calculated under measurement of B-BBEE Procurement Spend as a percentage of Total Measured Procurement Spend of that Measured Entity; C is the compliance target for each criteria specified in the scorecard under statement [5] 400; D is the Weighting points allocated to each criteria specified in the scorecard under statement [5] 400.

ANNEXE 400(B)**Annexe 400B – 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 Enterprise and Supplier Development	Verifiable Cost (including both monetary and non-monetary)	100%
Discounts in addition to normal business practices supporting Enterprise and Supplier Development	Discount Amount (in addition to normal business discount)	100%
Overhead Costs incurred in supporting Enterprise and Supplier Development (including people appointed in Enterprise and Supplier Development)	Verifiable Costs (including both monetary and non-monetary)	70%

<u>Loans and Related Contributions</u>		
Interest-Free Loan with no security requirements supporting enterprise and supplier development	Outstanding Loan Amount	70%
Standard Loan to Enterprise and Supplier Development Beneficiaries	Outstanding Loan Amount	50%
Guarantees provided on behalf of a Beneficiary entity	Guarantee Amount	3%
Lower Interest Rate	Outstanding loan amount	Prime Rate – Actual Rate
<u>Equity Investments and Related Contributions</u>		
Minority Investment in Enterprise and Supplier Development Beneficiaries	Investment Amount	70%
Enterprise and Supplier Development Investment with lower dividend to financier	Investment Amount	Dividend Rate of Ordinary Shareholders – Actual Dividend Rate of Contributor
<u>Contributions made in the form of human resource capacity</u>		
Professional services rendered at no cost and supporting Enterprise and Supplier Development	Commercial hourly rate of professional	60%
Professional services rendered at a discount and supporting Enterprise and Supplier Development	Value of discount based on commercial hourly rate of professional	60%
Time of employees of Measured Entity productively deployed in assisting beneficiaries	Monthly salary divided by 160	60%
<u>Other Contributions</u>		
Shorter payment periods	[Percentage of invoiced amount] Percentage of invoiced amount multiplied by 15% (being an approximation of the cost of short term funding)	Percentage being 15 days less the number of days from invoice to payment Maximum points that can be scored is 15% of 15 points under Enterprise and Supplier Development

ANNEXE 400(B)**A: Qualifying Contributions are measurable on the following basis:**

$$A = \frac{B}{C} \times D$$

Where

A is the score achieved in respect of the Qualifying Contributions made by the Measured Entity

B is the average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement or the this statement or the Inception Date to the date of measurement

C is compliance target in respect of the Qualifying Contributions as specified in the scorecard for statement 400

D is the Weighting points allocated to the criteria under the scorecard for statement 400.

CODE SERIES 500: MEASUREMENT OF THE SOCIO- ECONOMIC DEVELOPMENT ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

___ Words underlined with a solid line indicate insertions into existing enactments

Amendment of heading of Code 700, Statement 700 – the General Principles for measuring Socio-economic Development

CODE SERIES [7]00: MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

CODE SERIES 500: MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT [7]00: THE GENERAL PRINCIPLES FOR MEASURING SOCIO-ECONOMIC DEVELOPMENT

STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING SOCIO-ECONOMIC DEVELOPMENT

CODE SERIES 500: MEASUREMENT OF THE SOCIO- ECONOMIC DEVELOPMENT ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT

STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING THE SOCIO - ECONOMIC DEVELOPMENT ELEMENT

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

Arrangement of this statement

Para	Subject	Page
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2	The SED scorecard	2
3	Key Measurement Principles	2
4	Measurement of Socio-economic development contributions	3
5	The Benefit Factor Matrix	3

1 OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to specify:

- 1.1 the Socio-Economic Development (SED) and Sector Specific Contributions scorecard;
- 1.2 the key measurement principles applicable when calculating Socio-Economic Development Contributions; and
- 1.3 the formula for calculating the individual criteria specified in the SED scorecard.

2 THE SED SCORECARD

- 2.1.1 **[The Net Profit After Tax (NPAT) or average target applies unless]:**
 - 2.1.1.1 **[the company does not make a profit last year or on average over the last five years]**
 - 2.1.1.2 **[the net profit margin is less than a quarter of the norm in the industry].**
- 2.1.2 **[If the Turnover is to be used, the target will be set at:]**
 - 2.1.2.1 **[1% x Indicative Profit Margin (NPAT/Turnover) x Turnover]**
 - 2.1.2.2 **[Indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.]**
- 2.2 The following table represents the criteria and method used for deriving a score for Socio- Economic Development under this statement:

Criteria	Weighting Points	Compliance Target
[Average] Annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target.	5	1% of NPAT

- 2.3 The weighting points in the SED scorecard represent the maximum number of points possible for each of the criteria.

3 KEY MEASUREMENT PRINCIPLES

- 3.1 **General principles:**
 - 3.1.1 Measured Entities receive recognition for any Socio-Economic Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.
 - 3.1.2 Socio-Economic Development Contributions of any Measured Entity are recognisable **[cumulatively]** annually
 - 3.1.2.1 No portion of the value of any Socio-Economic Development contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement

3.2 Socio- Economic Development Contributions:

- 3.2.1 Socio-Economic Development Contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a Measured Entity with the specific objective of facilitating income generating activities for targeted beneficiaries.
- 3.2.2 The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least **[75%]** 100% of the value directly benefits black people.
- 3.2.3 **[If less than 75% of the full value of Socio-Economic Development Contributions directly benefits black people, the value of the contribution made multiplied by the percentage that benefits black people, is recognisable].**
- 3.2.4 The following is a non-exhaustive list of qualifying initiatives towards Income Generation:
- 3.2.4.1. Any programme that creates sustainable access to the economy for its beneficiaries.
- 3.2.4.2. Any programme which supports the beneficiaries participating in public-private partnerships to i.e. build educational infrastructure (schools, classrooms and facilitate human resource development (training of educators and learners).
- 3.2.4.3. Improvement of capacity to work, including self-employment, by provision of training and /or mentoring of beneficiaries to assist them to improve their employability.
- 3.2.4.4. Programmes that promote HIV/AIDS awareness.
- 3.2.4.5. Providing opportunities for adult education
- 3.2.4.6. Infrastructure development for rural areas and marginalised areas in order facilitate access to sustainable economic activities.

4 MEASUREMENT OF SOCIO-ECONOMIC DEVELOPMENT CONTRIBUTIONS

Socio-Economic Development Contributions are measurable using the formula in Annexe 500 [700] (B).

5 THE BENEFIT FACTOR MATRIX

The Minister may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.

Annexe 500(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 Qualifying 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 Qualifying 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 Qualifying 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 Qualifying Socio-Economic Development Contributions	Commercial hourly rate of professional	80%
Professional services rendered at a discount supporting socio-economic development, sector specific initiatives or Qualifying 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 Qualifying Socio-Economic Development Contributions	Monthly salary divided by 160	80%

SCHEDULE 1

PART 2: DEFINITIONS

GENERAL EXPLANATORY NOTE

[] Words in bold type in square brackets indicate deletions from existing enactments

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"Accreditation Body"	means the South African National Accreditation System or any other Entity appointed by the Minister from time to time, <u>tasked with:</u> (A) accrediting Verification Agencies; and (B) developing, maintaining and enforcing the Verification Standards
"Absorption"	<u>means a measure of the learner's ability to successfully secure formal permanent or long-term contract employment, or to proceed with further education and training</u>
"Apprenticeship"	<u>means an agreement between an apprentice and an employer for a set period of time during which the apprentice works and receives training in the workplace.</u>
"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] <u>R50,000,000</u> measured using a standard valuation method;
"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 [8] 600; (C) for Exempted Micro-Enterprises, the <u>applicable</u> deemed BEE Procurement Recognition <u>[of 100% and BEE Status of Level 4 Contributor]</u> under statement [8] 000;
"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 before 27 April 1994; or; (B) 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 on] (a) before 27 April 1994; or (b) <u>after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but were precluded from doing so by Apartheid policies;</u>
"Certified Learning Programme"	means any Learning Programme for which the Measured Entity has: (A) any form of independent written certificate as referred to in the "Learning Achievements" column of the Learning Programme 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 300 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 [(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 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;]
<u>“Employed (section 18 (1))”</u>	<u>means a learner that was in the employment of the employer party to the learnership agreement concerned when the agreement was concluded. The learner’s contract of employment is therefore not affected by the agreement.</u>
<u>“Employed (section 18 (2))”</u>	<u>means a learner that was not in the employment of the employer party to the learnership agreement concerned when the agreement was concluded. The employer and learner must therefore enter into a contract of employment.</u>
<u>“Enterprise Development Contributions”</u>	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 <u>more than</u> 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;]
<u>Exempted Micro Enterprises (“EME”)</u>	means an Entity with an annual turnover of less than [R 5 (five)] R 10 (ten) million;
<u>“Industry Specific Initiatives”</u>	<u>means the qualifying contributions that are unique to the industry in which enterprises operate. For the purposes of this statement an industry may be grouped in major divisions in accordance with the Standard Industrial Classification Coding System used by Statistic South Africa;</u>
<u>“Internship”</u>	<u>means an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work.</u>
<u>“Learnership”</u>	<u>means a work-based route to a qualification. It is a workplace education and training programme comprising both structured practical workplace (on-the-job) experience and structured theoretical training.</u>
<u>“Imported goods”</u>	<u>means procured goods and services represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry</u>
<u>“New Enterprise”</u>	<u>means an early stage business which is similar to a start-up. However, an early stage business is typically 3 years old or less.</u>
[“Ownership Fulfilment”]	[has the same meaning as referred to in the ownership scorecard in statement 100;]

<u>"PIVOTAL report"</u>	<u>means a report on 'Professional, Vocational, Technical and Academic Learning' programmes that meet the critical needs for economic growth and social development, generally combining course work at universities, universities of technology and colleges with structured learning at work.</u>
"QSE"	means a Qualifying Small Enterprise that qualifies for measurement under the qualifying small Entity scorecard with a turnover of between [R5 and R35 million] R10 and R50 million;
"Qualifying Enterprise Development Contributions"	means 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 [5] 400 ;
<u>"Qualifying Local Supplier Development Beneficiary"</u>	<u>means any existing or new entity that qualifies as an Enterprise Development Beneficiary or is more than 50% black owned, and receives the Local Supplier Development support, in accordance with Statement 400, from the Measured Entity</u>
["Uncertified Learning Programme"]	[means any Learning Programme of the Measured Entity that is not a Certified Learning Programme;]
"Value-Adding Suppliers"	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

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