

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

STATEMENT 003: GUIDELINES FOR DEVELOPING AND GAZETTING OF TRANSFORMATION CHARTERS AND SECTOR CODES

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

Arrangement of this statement

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1 Objective of this statement

The objectives of this statement are to specify:

- 1.1 the manner of gazetting Transformation Charters under section 12 of the Act;
- 1.2 the process for developing and gazetting of Sector Codes under section 9 of the Act;
- 1.3 the status of Transformation Charters and Sector Codes;
- 1.4 the status of enterprise B-BBEE plans; and
- 1.5 recommend an approach for drawing up Transformation Charters.

2 Procedure for developing and gazetting of Transformation Charters

- 2.1 The representative body of a sector seeking to gazette a Transformation Charter under section 12 must:
 - 2.1.1 apply in writing to the Minister; and
 - 2.1.2 provide evidence of compliance with section 12 of the Act.
- 2.2 The Minister may refuse an application to gazette a Transformation Charter if the applicant has failed to comply with section 12 of the Act.
- 2.3 If the Minister refuses to grant an application under paragraph 2.2.
 - 2.3.1 the Minister must notify the applicant of that decision in writing within two months; and
 - 2.3.2 an applicant may reapply for the gazetting of that Transformation Charter by revising its submission.
- 2.4 The Minister must gazette that Transformation Charter as soon as it is reasonably possible following the granting of an application under paragraph 2.1.

3 Procedure for developing and gazetting of Sector Codes

- 3.1 The following principles apply to developing Sector Codes:
 - 3.1.1 there must be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a transformation charter subject to the proposed Sector Code;
 - 3.1.2 the proposed Sector Code must fully address all the Elements in the Generic Scorecard;
 - 3.1.3 the proposed Sector Code must use the same definitions in respect of all beneficiaries as those used in the Codes;
 - 3.1.4 the proposed Sector Code must use the same calculation methodologies to measure compliance as those used in the Codes;

- 3.1.5 the proposed Sector Code may deviate from Targets and Weightings used in the Codes only where those deviations are justifiable based on sound economic principles, sectoral characteristics or empirical research;
- 3.1.6 the proposed Sector Code may introduce a new additional Element for measurement where such addition is justifiable based on sound economic principles, sectoral characteristics or empirical research;
- 3.1.7 the proposed Sector Code must clearly define its scope of application;
- 3.2 The representative body of a sector seeking to gazette a Sector Code under section 9 must:
 - 3.2.1 apply in writing to the Minister;
 - 3.2.2 indicate the process by which the Charter has B-BBEE developed; and
 - 3.2.3 provide evidence of compliance with section 12 of the Act.
- 3.3 The Minister must refuse an application under this paragraph 3 if the proposed Sector Code:
 - 3.3.1 inadequately addresses any of the principles of any of the Elements referred to in the Generic Scorecard as referred to in paragraph 3.1.2;
 - 3.3.2 contains deviations from the calculation methodologies applicable in measuring B-BBEE compliance as referred to in paragraph 3.1.4;
 - 3.3.3 contains deviations in the definitions of beneficiaries of B-BBEE as referred to in paragraph 3.1.3;
 - 3.3.4 contains inconsistencies in the Targets and Weightings referred to in paragraph 3.1.5 unless fully justified under that paragraph; or
 - 3.3.5 contains inadequacies or a potential for ambiguity in defining the scope of the sector as referred to in paragraph 3.1.7.
- 3.4 If on receiving the documents referred to in paragraph 3.2, the Minister decides against adopting that proposed Sector Code, the Minister may:
 - 3.4.1 refer the application back to the representative body for the sector;
 - 3.4.2 refer the documents to the Advisory Council for further consideration or recommendations.
- 3.5 The Minister may issue a draft Sector Code for public comment, in terms of section 9(5) of the Act.
- 3.6 After considering the public comment, the Minister may gazette the Transformation Charter as a Sector Code under section 9 of the Act.

4 Status of Transformation Charters and Sector Codes

- 4.1 The gazetting of a Transformation Charter under section 12 of the Act is evidence of the commitment to promote B-BBEE in the applicable sector and is not binding on organs of state or public entities.

4.2 Code series 000 to 700 and any statements under those Codes remain applicable to enterprises in the sector, despite the gazetting of their Transformation Charter under section 12 of the Act.

4.3 A Sector Code enjoys equal status with that of any other Code

5 Recommended Model for Developing Transformation Charters

5.1 This paragraph provides guidance to sectors wishing to develop Transformation Charters. It is not a legal requirement.

5.2 Recommended Model for developing Transformation Charters:

5.2.1 The following represents the matters needing consideration by sectors developing a Transformation Charter for gazetting under section 12 of the Act:

5.2.1.1 the sector seeking to gazette their Transformation Charter should interact or transact with the organs of state or public entities;

5.2.1.2 there should be common commercial and other characteristics within the entities forming part of the proposed sector;

5.2.1.3 the sector should be significant having regard to:

5.2.1.3.1 the national strategic importance of the sector as determined by government; and

5.2.1.3.2 the volume and value of transactions taking place between the sector and organs of state or public entities collectively - this is measurable by reference to the total volume and value of transactions taking place within the sector.

5.2.2 The following represents a recommended model for developing a Transformation Charter:

5.2.2.1 Public Proclamation of Charter: there must be a public proclamation of the object of developing a Transformation Charter.

5.2.2.2 Setting of Charter Mandate: the initiators of the Charter process propose setting the mandate of the Charter and the Charter's overall objectives. These initiators should then present a proposed mandate for the Charter, to relevant stakeholders for consideration and comment. The final mandate of the Charter must reflect the concerns and needs of the stakeholders.

5.2.2.3 Appointment of a Steering Committee: the initiators of the Charter process appoint a Steering Committee. This Steering Committee should represent relevant groups of stakeholders and should consist of senior and influential members of entities, organisations or departments in the sector.

5.2.2.4 Appointment of relevant Working Groups: the Steering Committee appoints several working groups to aid in drafting the Charter. Element specific working groups are desirable.

5.2.2.5 First Draft: Based on recommendations by the appointed Working Groups, the Steering Committee must compile the first draft of the Charter for presentation to stakeholders.

- 5.2.2.6 Consultation with Stakeholders: the Steering Committee will communicate the key elements of the first draft of the Transformation Charter, including a draft of its scorecard to stakeholders.
- 5.3 Recommended Consulting Process, Representatives and Stakeholder Identification:
 - 5.3.1 The consultation process for developing a Transformation can take any of the following forms:
 - 5.3.1.1 a major gathering of the key stakeholders in the sector;
 - 5.3.1.2 workshops addressing particular issues in the Transformation Charter;
 - 5.3.1.3 sector-wide road shows; or
 - 5.3.1.4 other interactive mechanisms that would ensure effective communication with and participation by the relevant stakeholders.
 - 5.3.2 The relevant stakeholders may include:
 - 5.3.2.1 key enterprises within the sector;
 - 5.3.2.2 industry bodies for the sector and the relevant chamber of commerce;
 - 5.3.2.3 government, and in particular, the relevant government departments having jurisdiction over the particular sector;
 - 5.3.2.4 labour bodies or the relevant trade unions;
 - 5.3.2.5 industry regulators and civil society organisations; and
 - 5.3.2.6 any others with a relevant interest in the sector.
 - 5.3.3 The steering committee should have equitable representation to enable participation by all the different stakeholders in the Transformation Charter formulation.
 - 5.3.4 Implementation of innovative mechanisms for ensuring that under resourced parties contribute in the key strategic decisions is a key consideration, especially in the following stages:
 - 5.3.4.1 setting up various working groups
 - 5.3.4.2 setting the mandates of the respective charter committees;
 - 5.3.4.3 actively taking part in the various charter committees;
 - 5.3.4.4 outlining the key principles and qualitative undertakings of the Transformation Charter;
 - 5.3.4.5 setting targets and weightings for the sector as contained in the balanced B-BBEE scorecard;
 - 5.3.4.6 providing for implementation, reporting and monitoring mechanisms;
 - 5.3.4.7 presentation of the Transformation Charter to the Advisory Council, the ministry in the government responsible for the relevant sector and to the Minister of Trade and Industry.

- 5.3.4.8 setting the mandate and the powers of the Charter Council;
- 5.3.4.9 ensuring application of good corporate governance principles in the Steering Committee or any executive body reporting to the Charter Council.
- 5.4 The Role of Charter Councils:
 - 5.4.1 The following represents a recommended model for setting up Charter Councils:
 - 5.4.1.1 equitable composition of stakeholders in the members of the Charter Council;
 - 5.4.1.2 ensuring application of good corporate governance principles in the Charter Council.
 - 5.4.2 The functions of the Charter Council may include:
 - 5.4.2.1 to provide guidance on sector-specific matters effecting B-BBEE in entities within the sector;
 - 5.4.2.2 to compile reports on the status of broad-based black economic empowerment within the sector, and
 - 5.4.2.3 to share information with sector members, approved accreditation agencies or the Minister.
 - 5.4.3 The Charter Councils should report to the Minister and to the Advisory Council on progress made by the sector subject to the relevant Transformation Charter. Such reports should typically contain qualitative and quantitative information about sectoral performance, including details about all the elements of the sector's B-BBEE balanced scorecard.

6 Variation of Indicators in Codes 200 and 300

- 6.1 A Sector Code may allow the use of indicators that differ from those contained in Codes 200 and 300 as a means of fixing the relevant Measurement Categories.
- 6.2 Sectors adopting this approach must:
 - 6.2.1 consider using indicators that are consistent with the principles contained in the EE Regulations;
 - 6.2.2 consider all relevant factors such as seniority, expertise, scarcity of skill-set, organisational role and responsibility and geographic location;
 - 6.2.3 base the definition of occupational levels on sound and empirical research undertaken in the sector by a reputable institution; and
 - 6.2.4 if the indicators include salary scales, consider providing for a default cost of living or inflation adjustment in the salary scales, even if the sector intends to amend those salary scales annually
- 6.3 The gazetting of a Sector Code does not affect any employer's obligations to comply with the EE Act and its regulations.