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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

25 April 2014

Interpretation Statement – Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice of 2007

Purpose of this Statement

The purpose of this statement is to provide interpretation on the B-BBEE Codes of Good Practice of 2007 regarding issues raised by the market.

Statement of Clarification One

1. Ownership

1.1. Modified Flow-Through Principle (MFT)

The MFT is also applicable to Trusts, where a Trust holds shares in a measured entity. A BEE-owned company is defined as a juristic person, and in terms of the Companies Act, 2008 (Act 71 of 2008), the definition of a “juristic person” includes a Trust.

1.2. Net Value

In an event where it is not practical or possible to calculate and verify black ownership or beneficiaries, such as where a Public Benefit Organisation (PBO) is a shareholder of a measured entity or the beneficiary of socio-economic development contributions, a competent person’s report is expanded to further include “certain situations” where official estimating records such as publicly available municipal records, university enrolment records and the South African census reports are considered appropriate evidence to estimate black ownership or beneficiaries.

1.3. Acquisition Debt

When calculating net value, any debt that substitutes or replaces acquisition debt is still acquisition debt, notwithstanding that it may be owed by another person or entity.

1.4. Definition of a Black New Entrant

A “Black New Entrant” is a black participant who holds rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, has not held equity instruments in any other entity that has a total value of less than R20 000 000 at the time the deal was entered into, measured using a standard valuation method. In the case of a

Broad-Based Ownership Scheme, the beneficiaries of the scheme being natural people are considered as opposed to the scheme as a whole.

2. Employment Equity

2.1. Adjusted Recognition for Gender (ARG)

When calculating the Economically Active Population (EAP) targets or the bonus points, the ARG does not apply.

3. Preferential Procurement

3.1. Definition of a “Black Entrepreneur”

When defining a “Black Entrepreneur” the “generally accepted definition” of the word “entrepreneur” should be applied.

3.2. Paragraph 2.1.3 in Statement 500

Statement 500: paragraph. 2.1.3 Should read as follows, “B-BBEE Procurement Spend from any of the following suppliers based on the B-BBEE Procurement Recognition Level as a percentage of Total Measured Procurement Spend”.

Paragraph 2.1.3.1 and 2.1.3.2 should remain as is on the 2007 B-BBEE Codes of Good Practice.

4. Enterprise Development

4.1. Shorter Payment Notice

The notice that was issued in 2012 on a shorter payment period was only issued for public comment and not to be carried out. When applying the 2007 Codes, beneficiaries of Enterprise Development are still Category A and Category B.

ISSUED BY

THE B-BBEE CHIEF DIRECTORATE – BROADENING PARTICIPATION DIVISION

DEPARTMENT OF TRADE AND INDUSTRY