

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

STATEMENT 102:

RECOGNITION OF THE SALE OF ASSETS, EQUITY INSTRUMENTS, AND OTHER BUSINESSES

Issued under section 9 of the Broad-Based Black Economic Empowerment Amendment Act of 2013

Arrangement of this statement

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1. OBJECTIVES OF THIS STATEMENT

The objectives of this statement are to:

- 1.1 Set out the conditions where the Sale of Assets, Equity Instruments and other Businesses will be recognised.
- 1.2 Set out how the Ownership points will be determined.

2 APPLICATION

- 2.1 A qualifying transaction in terms of this Statement may involve the sale of:
 - 2.1.1 an Asset;
 - 2.1.2 a Business; or
 - 2.1.3 Equity Instruments in an Entity.

3 KEY PRINCIPLES

3.1 General Principles:

- 3.1.1 A Seller that has concluded a transaction involving a sale of Asset, Equity Instrument or Business of a separately identifiable related business, may claim the benefits provided for in this statement in its own Ownership scorecard.
- 3.1.2 Where a Seller has claimed benefits in terms of this Statement under its Ownership scorecard it may not claim benefits under the Enterprise and Supplier Development element.

3.2 Qualification Criteria:

- 3.2.1 For Ownership points to be recognised the transaction:
 - 3.2.1.1 must result in the creation of viable and sustainable businesses or business opportunities in the hands of Black people; and
 - 3.2.1.2 result in the transfer of critical and specialised skills, managerial skills, and productive capacity to Black people.
- 3.2.2 A Sale of Asset, Equity Instrument and Business must involve a separately identifiable related Business which has:
 - 3.2.2.1 no unreasonable limitations or conditions with regards to its clients or customers;

and

- 3.2.2.2 clients, customers or suppliers other than the Seller.
- 3.2.2.3 B-BBEE shareholders or their successors if the BEE shareholding is the same or improved holding the asset for a minimum of three years.
- 3.2.3 Any operational outsourcing arrangements between the Seller and the separately identifiable related Business must be negotiated at arms-length on a fair and reasonable basis.
- 3.2.4 The transaction should be subject to an independent verification value by an independent expert.
- 3.2.5 The following transactions do not constitute Qualifying Transactions:
 - 3.2.5.1 transfers of business rights by way of license, lease or other similar legal arrangements not conferring unrestricted ownership; and
 - 3.2.5.2 sales of franchises by franchisors to franchisees, but includes sales of franchises from franchisees to other franchisees or to new franchisees.
 - 3.2.5.3 No Qualifying Transaction could be claimed as BEE ownership if a repurchase transaction is entered into within a three period after transaction implementation, even if transaction implementation is deferred post year 3. A seller cannot have any right to enforce such a repurchase.
 - 3.2.5.4 Ownership points are subject to existing contracts between the parties to remain in effect on market related terms, subject to market norm service levels.

4 MEASUREMENT PRINCIPLES

- 4.1 The calculation of the Ownership points in terms of the Ownership scorecard indicator 2.3 under statement 100 must be based on:
 - 4.1.1 the total value of the transaction.
 - 4.1.2 the value of Equity Instruments held by Black people in the separately identifiable related Business ;
 - 4.1.3 the carrying value of the Acquisition Debt of Black_people in the separately identifiable related Business ; and
- 4.2 All calculations in terms of paragraph 4.1.1 to 4.1.3 must use a Standard Valuation method.
- 4.3 The Seller, applying Statement 102 for its full or part Ownership compliance, will have to comply with the provisions of paragraphs 3.3.1.1 and 3.3.3 under Statement 000 only to the extent of the transaction involving the separately identifiable related Business.
- 4.4 The Seller will have to comply with all other Priority elements as required by

paragraph 3.3 under Statement 000.

5 EQUIVALENCY PERCENTAGES

5.1 Apply to the Ownership indicators in paragraphs 2.1 and 2.2 of the Ownership scorecard.

5.2 The Seller must include the Equivalency Percentages in its Ownership scorecard as if those percentages arose from a sale of Equity Instruments in the Seller to Black people.

5.3 The Equivalency Percentages for the indicators in paragraphs 2.1 and 2.2 of the Ownership scorecard can be calculated in terms of Annexe 102 (A).

5.4 Any portion or whole of the separately identifiable related business sold off to Black people, towards the fulfilment of the Ownership element of B-BBEE in terms of this Statement 102, is measurable against the total value of the Seller.

5.5 A standard valuation method must be used to determine the values of both the Seller and the separately identifiable related Business.

5.6 In calculating their Ownership score, the Seller may recognise the Value of the sale transaction in the separately identifiable related Business to Black people on the following basis:

5.6.1 the separately identifiable related Business must form part of the same chain of ownership and be owned by the Seller;

5.6.2 the percentage of the value of the separately identifiable related Business sold off or held by Black people to the total value of Seller represents the recognisable Economic Interest held by Black people; and

5.6.3 the percentage of Exercisable Voting Rights ceded to the new owners of the separately identifiable related Business of the Equity Instruments in the Associate Entity represents the recognisable right to Exercisable Voting Rights held by Black people; and

5.6.4 the rights of Ownership in the Equity Instruments are comparable to rights that would have accrued had the sale/transaction taken place at Seller level.

6 RECOGNITION OF SALE OF ASSET, EQUITY INSTRUMENTS, AND BUSINESSES

6.1 A Seller seeking recognition of a Qualifying Transaction in its Ownership scorecard must determine that recognition under paragraph 4 in compliance with paragraph 2.3 of Statement 000:

6.1.1 for the first three years after the transaction the Seller will recognise Ownership points on date of measurement based on:

6.1.1.1 the value of the Seller; and

-
- 6.1.1.2 the value of the separately identifiable related Business.
- 6.1.2 for each year thereafter the third year, as per paragraph 6.1.1, the Seller will recognise Ownership points on date of measurement based on:
- 6.1.2.1 the Ownership indicator percentages achieved at the date of measurement in the third year after the transaction.
- 6.2 A Seller seeking recognition of a Qualifying Transaction for the indicators in paragraphs 2.1 and 2.2 of the Ownership scorecard must obtain a review of the transaction value by an Independent Expert, who is required to opine on the fairness of the transaction value. Continued recognition for the indicators in paragraphs 2.1 and 2.2 of the Ownership scorecard is subject to the opinion by the Independent Expert supporting the transaction value.
- 6.3 Net Value points recognition for the Seller will be based on the points achieved, using the principles outlined in paragraph 4 above, in the third year as per the provisions of this paragraph
- 6.4 Net Value points will be measured based on the time based Graduation Factor as provided for in Statement 100.
- 6.5 Subject to obtaining an opinion on the Net Value calculation by an Independent Expert, who will be required to opine on whether the Net value calculation is fair and whether the Graduation Factor has been applied accurately, for each year after year 3, the Seller will continue to recognise Net Value Ownership points on the measurement date equal to the Net Value Ownership Points achieved in year 3.

Annexe 102 (A)

This formula determines the equivalency percentages for the indicators in paragraph 2.1 and 2.2 of the Ownership Scorecard.

$$A = .B, \times D$$

Where

A is the Equivalency Percentage for each of the indicators in paragraphs 2. 1 and 2.2 of the Ownership scorecard

B is the value of the Qualifying Transaction to the separately identifiable related Business determined using a Standard Valuation method

C is the value of the Seller determined using a Standard Valuation method

D is the Indicator Percentages of the separately identifiable related Business

Definition:

Separately Identifiable Related Business is defined, for the purposes of this Statement, as a business that is related to the Seller by virtue of being a Subsidiary, Joint Venture, Associate, Business Division, Business Unit, or any other similar related arrangements within the Ownership structure of the Seller.