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GENERAL NOTICE

NOTICE 1106 OF 2010

(DEPARTMENT OF TRADE AND INDUSTRY)

CODES OF GOOD PRACTICE ON BROAD BASED BLACK ECONOMIC EMPOWERMENT

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

(a) Issues for public comment, Phase I of the **DRAFT FINANCIAL SECTOR CHARTER** (The Draft Code) as provided for in Code 000 Statement 003 of the Codes of Good Practice and **Section 9 (5)** of the Broad Based Black Economic Empowerment (Act No. 53 of 2003); and

(b) Invite interested persons and the public to submit comments on the draft code within ***60 days*** from the date of this publication.

Interested parties are invited to forward their comments in writing for the attention of **Xolisile Zondo** and **Jacob Maphutha**, on the following address (es):

E-mail: bee-fsc@thedti.gov.za.

or

Private Bag X 84
Pretoria
0002
c/o BEE Unit

Enquiries: 012 394 1609/3430

.....

Dr Rob Davies, MP
MINISTER OF TRADE AND INDUSTRY
DATE: 27/11/2010

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DRAFT FINANCIAL SECTOR CODE

Phase 1

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SECTION A BACKGROUND

1 Preamble

This Draft Financial Sector Code has been prepared in terms of the Broad-based Black Economic Empowerment (B-BBEE) Act (Act 53 of 2003), subsequently referred to as the Act. It is based on the Financial Sector Charter.

The Financial Sector Charter came into effect in January 2004 as a result of the National Economic Development and Labour Council (NEDLAC) Financial Sector Summit. NEDLAC is the multilateral social dialogue forum which brings together government, business, labour and community constituencies to approve social, economic and labour market policy.

Following the summit, the Charter was drafted by the Trade Associations[1], Government[2] and the Association of Black Securities and Investment Professionals (ABSIP[3]). Although labour[4] and community[5] constituencies were not included in drafting the Financial Sector Charter, they agreed to participate in its governing structure, the Charter Council, alongside Government, Business and ABSIP to finalise outstanding elements of the Charter and to participate in aligning the Financial Sector Charter with the B-BBEE Act Codes of Good Practice (CoGP).

1.1 In the alignment process, all the Financial Sector Charter Council participants committed to developing a sector transformation code aligned to the CoGP, noting that:

1.1.1 despite significant progress since the establishment of a democratic government in 1994, South African society remains characterised by racially based income and social services inequalities. This is not only unjust, but inhibits the country's ability to achieve its full economic potential;

1.1.2 B-BBEE is a mechanism aimed at addressing inequalities and mobilising the energy of all South Africans. It will contribute towards sustained economic growth, development and social transformation in South Africa;

1.1.3 inequalities also manifest themselves in the country's financial sector. A positive and proactive response from the sector through the implementation of B-BBEE will further unlock the sector's potential, promote its global competitiveness and enhance its world class status;

1.1.4 equally, the financial stability and soundness of the financial sector and its capacity to

[1] The Association for Savings and Investment South Africa (ASISA); South African Insurance Association (SAIA); International Banking Association (IBA); Banking Association of South Africa (BASA), JSE Limited

[2] The Presidency, National Treasury and Department of Trade and Industry

[3] ABSIP representing Black professional organisations

[4] Congress of South African Trade Unions (COSATU); National Council of Trade Unions (NACTU);Federation of Unions of South Africa (FEDUSA)

[5] Financial Sector Campaign Coalition; Disabled People South Africa; National Co-operatives Association; The Women's National Coalition; SA Youth Council; SA Civics Organisation.

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facilitate domestic and international commerce is central to the successful implementation of B-BBEE.

1.2 The Draft Financial Sector Code commits all participants to actively promoting a transformed, vibrant and globally competitive financial sector that reflects the demographics of South Africa, which contributes to the establishment of an equitable society by providing accessible financial services to black people and by directing investment into targeted sectors of the economy.

2 Introduction

2.1 This Draft Financial Sector Code is the product of the interaction between the Trade Associations, ABSIP, Labour, Community and Government. The Draft Code reflects the accord reached by all of the stakeholders regarding their joint commitment to fostering B-BBEE in the financial sector and in the South African economy.

2.2 It is recorded that the Minister of Trade and Industry has previously gazetted the Financial Sector Charter as a Transformation Charter under Section 12 of the Act.

2.3 The Financial Sector Council is of the opinion that the Draft Financial Sector Code meets all of the requirements of Paragraph 3 of Code 000, Statement 003 and has applied to the Minister of Trade and Industry to publish the Draft Financial Sector Code under Section 9(5) of the Act to allow for public comment and for gazetting as a Sector Code under Section 9(1) of the Act.

3 Scope of Application

3.1 This Code applies to any natural or juristic person conducting a business, trade or profession in the South African financial sector, including, but not limited to, the following:

3.1.1 Banking;

3.1.2 Long-term insurance;

3.1.3 Short-term insurance;

3.1.4 Re-insurance;

3.1.5 The management of retirement and pension funds;

3.1.6 Management of formal collective investment schemes in securities;

3.1.7 Financial Services Intermediation and Brokerage;

3.1.8 Management of investments on behalf of the public, including, but not limited to, private equity, members of any exchange licensed to trade equities or financial instruments in South Africa and entities listed as part of the financial index of a licensed exchange; and

3.1.9 Underwriting Management Agents.

3.2 This Code does not apply to:

3.2.1 Natural or juristic persons that do not have trading operations in the Republic of South Africa.

3.2.2 The trading operations of natural or juristic persons outside the Republic of South Africa;

3.2.3 Managers of investments on behalf of the public that are not subject to regulation in terms of the Financial Services Board Act, for example, money held in intermediate trusts by lawyers.

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4 Status of this Code

4.1 In conceptualising, implementing and measuring any B-BBEE initiatives, financial institutions and other interested parties must apply this Code read together with the CoGP issued under section 9(1) of the B-BBEE Act on 9 February 2007 (the CoGP). Whilst the gazetting of this Sector Code means that it is binding and takes precedence over any other Code, including the CoGP, the CoGP are applicable only to the extent that this Code is silent on a particular aspect of B-BBEE that is covered in the CoGP.

4.2 This Draft Financial Sector Code will be published for public comment in two phases. Phase I specifically excludes Access to Financial Services, Empowerment Financing, Enterprise Development and some aspects of the measurement of Black ownership.

4.3 Phase II will aim to achieve consensus on these remaining issues after which a final version of the Draft Financial Sector Code will be published for public comment. After consideration of public comments, the Minister of Trade and Industry will be asked to gazette the Draft Financial Sector Code under Section 9(1) of the CoGP as a binding Code on the Financial Sector.

4.4 During this gazetting period in terms of Section 9(5), the Financial Sector will comply with the CoGP.

5 Interpretation

5.1 Unless otherwise stated in this Code, any term or phrase assigned a specific meaning in Schedule 1 to the CoGP and used in this Code, has the meaning assigned in that schedule.

5.2 **Affected institution** means every financial institution that takes designated investments.

5.3 **Agreed Standard Valuation** means a valuation of an asset (valued in terms of the context in which this term appears) based on normal valuation methodologies (representing standard market practice) given the nature and stage of development of the asset being valued provided that:

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5.3.1 the principles set out in the table hereunder will serve only as a guide to possible valuation methodologies that could be employed:

Operation	Valuation methodologies
Banking	Discounted cash flow
	Price to book
	Comparable Multiples
	Dividend Discount Model
	Capitalisation of earnings
	Net asset value
Insurance	Discounted cash flow
	Embedded value
	Price-to-embedded value
	Capitalisation of earnings
	Net asset value
Brokerage firms	Discounted cash flow
	Capitalisation of earnings
	Net asset value
Asset managers and Collective Investment Schemes	Discounted cash flow
	Capitalisation of earnings
	Percentage of funds under management
	Net asset value

5.3.2 where the financial institution is listed on the JSE Limited, the market capitalisation of the financial institution concerned shall serve as an overall benchmark for the individual valuations of the underlying assets and businesses of such financial institutions;

5.3.3 cash flows to a beneficiary or shareholder will be valued on an after-tax basis.

5.4 **Black Economic Empowerment,** as defined in the Broad-Based Black Economic Empowerment legislation, means the economic empowerment of all Black people, including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies.

5.5 **Black Economic Empowerment Transaction** means:

5.5.1 all transactions for the acquisition, by Black people, of direct ownership in an existing or new entity (other than an SMME) in the financial or any other sector of the economy and

5.5.2 joint ventures with, debt financing of or other forms of credit extension to, and equity investments in B-BBEE companies (other than SMMEs).

5.6 **Black People** means black people as defined in the B-BBEE 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 1993;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.

5.7 **Black-owned SMMEs** means both Exempt Micro Enterprises (with a turnover of less

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than R5 million per annum) and Qualifying Small Enterprises (with a turnover of between R5 million and R35 million per annum), having Black ownership of greater than 50%.

5.8 **Direct ownership** means ownership of an equity interest, together with control over all of the voting rights attaching to that equity interest, which may include Equity Equivalents.

5.9 **Discrimination** means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act.

5.10 **DFI** means a development finance institution created or funded by an organ of state and includes, without limitation, the Development Bank of Southern Africa, the Industrial Development Corporation, PostBank, the National Empowerment Fund, the Land Bank, Khula, the National Housing Finance Corporation, the National Youth Development Agency and all provincial development corporations.

5.11 **Designated investment** means any form of statutory or voluntary deposit, saving, investment or risk insurance placed or made by the South African public (whether of a wholesale or retail nature), but not by one financial institution in another.

5.12 **Empowerment financing** means the provision of finance for, or investments in:

5.12.1 Targeted Investment and

5.12.2 Black Economic Empowerment Transactions.

5.13 **Equity Equivalent** means transactions, defined under paragraph 7 of this code, which may be made by a financial institution, in lieu of a sale of equity by that financial institution in order to achieve its additional ownership requirements. For avoidance of doubt a financial institution may opt to achieve its additional ownership requirements by way of a traditional sale of shares to black South Africans or through the Equity Equivalent mechanism or through a combination of the two.

5.14 **Exempted Micro Enterprise (EME)** means an enterprise with an annual turnover of less than R5million. Such an enterprise is awarded a Level 4 B-BBEE status as stated in the CoGP. Where such an entity is also more than 50% Black owned, it will be awarded a Level 3 B-BBEE status.

5.15 **Financial Sector Council** means a council established as an independent entity and having responsibility for overseeing the implementation of the Financial Sector Code (FSC).

5.16 **Financial Institutions** means banks, long-term insurers, short-term insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public, including members of any exchange licensed to trade equities or financial instruments in this country and entities listed as part of the financial index of a licensed exchange.

5.17 **Global Policy** means a globally and uniformly applied restriction, regulation or directive, whether technical or commercial, imposed on a foreign owned financial institution by the parent company or on any financial institution by a regulator which regulates that financial institution.

5.18 **Indirect Ownership** occurs where an institution or other investor owns equity in a company on behalf of beneficiaries and there may not be direct participation by the beneficiaries in the voting rights.

5.19 **King Report** means the King Report on Corporate Governance for South Africa 2002 by the King Committee on Corporate Governance of the Institute of Directors in Southern Africa.

5.20 **Practice Directive** means a public document agreed by the Financial Sector Council from time to time which records further details as to the measurement and/or

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recognition of contributions to B-BBEE by financial institutions.

5.21 **Principles of B-BBEE transactions:**

5.21.1 B-BBEE ownership initiatives should be aimed at promoting the productive and sustainable participation of Black companies and Black people in each sector of the economy;

5.21.2 Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;

5.21.3 The funding structures should facilitate the transfer of full economic interest to the B-BBEE partner and longer-term shareholder-type relationships, as opposed to short-term portfolio investments (especially where the transaction has been facilitated);

5.21.4 If the acquisition of equity by the B-BBEE company is facilitated in terms of the provisions of this Code or through Government assistance, the retention of the shareholding as a B-BBEE share should be promoted to the greatest extent possible;

5.21.5 Initiatives aimed at achieving broad-based empowerment will be promoted. This would include employee ownership, community and collective ownership and

5.21.6 Joint ventures or partnership arrangements should be meaningfully structured with equitable portions of the responsibility and benefit to each party.

5.22 **Qualifying Small Financial Institutions (QSFI)** means a financial institution with designated investments of less than R50 million or annual turnover with a value of less than R35 million.

5.23 **South African National Accreditation System (SANAS)** is a national accreditation body that operates in compliance with the requirements for accreditation bodies as defined in the International ISO/IEC Guide 62 and ISO 17011.

5.24 **Targeted Investment** means debt financing of, or other forms of credit extension to, or equity investment in South African projects in areas where gaps or backlogs in economic development and job creation have not been adequately addressed by financial institutions. It specifically means financing of or investment in:

5.24.1 Transformational Infrastructure projects that support economic development in underdeveloped areas and contribute towards equitable access to economic resources. Such infrastructure projects could be in the following sectors:

5.24.1.1 transport;

5.24.1.2 telecommunications;

5.24.1.3 water, waste water and solid waste;

5.24.1.4 energy;

5.24.1.5 social infrastructure such as health, education, and correctional services facilities; and

5.24.1.6 municipal infrastructure and services.

5.24.2 Agricultural Development involving integrated support for resource-poor Black farmers, through enabling access to and the sustainable use of resources.

5.24.3 Low-income Housing for Black households with a stable income, the amount of which will be determined annually by the Financial Sector Council.

5.24.4 Black-owned SMMEs.

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SECTION B FRAMEWORK

6 Framework for Measuring Broad-Based Black Economic Empowerment

6.1	*Subject matter of this paragraph:*
6.1.1	This paragraph relates to the following statements within the CoGP:
6.1.1.1	The key principles of Code 000 Statement 000 (General Principles and the Generic Scorecard) including:
6.1.1.1.1	The fundamental principle for measuring B-BBEE compliance is that substance takes precedence over legal form.
6.1.1.1.2	In interpreting the provisions of the CoGP and this Code any reasonable interpretation consistent with the objectives of the Act and B-BBEE Strategy must take precedence.
6.1.1.1.3	The basis for measuring B-BBEE initiatives under this Sector Code is the B-BBEE compliance of the measured entities at the time of measurement.
6.1.1.1.4	Any misrepresentation or attempt to misrepresent any enterprise's true B-BBEE status may lead to the disqualification of the entire scorecard of that enterprise.
6.1.1.1.5	Initiatives which separate or divide enterprises solely as a means of ensuring eligibility as an Exempted Micro-Enterprise, Qualifying Small Enterprise or a Start-Up Enterprise are a circumvention of the Act and may lead to the disqualification of the entire scorecard of those enterprises concerned.
6.1.1.1.6	Any representation made by an entity about its B-BBEE compliance must be supported by suitable evidence or documentation. An entity that does not provide evidence or documentation supporting any initiative must not receive any recognition for that initiative.
6.1.1.1.7	Wherever a Standard Valuation Method applies to measuring an indicator, the same standard should apply, as far as reasonably possible, consistently in all other applicable calculations in this statement.
6.1.1.2	Code 800 Statement 800 (The Framework for the QSE Scorecard and Exempted Micro-Enterprises).
6.1.2	Code 000 Statements 003 (Guidelines for Developing and Gazetting of Transformation Charter and Sector Codes) and 004 (Scorecards for Specialised Enterprises) are unaffected by this Code.
6.2	*Applicability of the CoGP:* The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:
6.2.1	This Code contains two additional Elements of B-BBEE being:
6.2.1.1	Empowerment Financing and
6.2.1.2	Access to Financial Services.
	These two additional elements will be comprehensively defined in Phase II.

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6.2.2 The Scorecard for financial institutions (other than QSFIs) is as follows:

Element	Available Points	% Weighting	Primary Reference
Ownership	14 + 4 bonus	13.6%	Paragraph 7 of this Code read with Code 100
Management Control	8 + 1 bonus	7.8%	Paragraph 8 of this Code read with Code 200
Employment Equity	15 + 3 bonus	14.6%	Paragraph 9 of this Code read with Code 300
Skills Development	8	7.8%	Paragraph 10 of this Code read with Code 400
Preferential Procurement	15	14.6%	Paragraph 11 of this Code read with Code 500
Empowerment Financing and Enterprise Development	22	21.3%	To be discussed in Phase II
Access to Financial Services	18	17.5%	To be discussed in Phase II
Socio-Economic Development	3	2.8%	Paragraph 12 of this Code read with Code 700
Total	**103 + 8 bonus**		

6.2.3 The Scorecard for QSFIs is as follows:

Element	Weighting	Primary Reference
Ownership	20+4 bonus	Paragraph 7 of this Code read with Code 800, statement 801
Management Control	20 +1 bonus	Paragraph 8 of this Code read with Code 800, statement 802
Employment Equity	20+3 bonus	Paragraph 9 of this Code read with Code 800, statement 803
Skills Development	20	Paragraph 10 of this Code read with Code 800, statement 804
Preferential Procurement	20	Paragraph 11 of this Code read with Code 800, statement 805
Empowerment Financing and Enterprise Development	20	To be discussed in Phase II
Access to Financial Services	20	To be discussed in Phase II
Socio-Economic Development	20	Paragraph 12 of this Code read with Code 800, statement 807
Total	**100**	

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6.2.4 Based on the overall performance of a financial institution, the contributor levels are as follows:

Contribution Level	Qualification	B-BBEE Recognition
Level One Contributor	≥ 100% on the FSC Scorecard	135%
Level Two Contributor	≥ 85% but < 100% on the FSC Scorecard	125%
Level Three Contributor	≥ 75% but < 85 % on the FSC Scorecard	110%
Level Four Contributor	≥ 65% but < 75% on the FSC Scorecard	100%
Level Five Contributor	≥ 55% but < 65% on the FSC Scorecard	80%
Level Six Contributor	≥ 45% but < 55% on the FSC Scorecard	60%
Level Seven Contributor	≥ 40% but < 45% on the FSC Scorecard	50%
Level Eight Contributor	≥ 30% but < 40% on the FSC Scorecard	10%
Non Compliant Contributor	< 30% on the FSC Scorecard	0%

6.2.5 A QSFI submitting a scorecard under paragraphs 7-12 must select any five elements of that scorecard and report on those five elements only. The weightings for all sub-elements of the elements specified in paragraphs 7-12 below are to be allocated pro-rata.

6.2.6 Where those QSFIs do not make a selection, and subject to the minimum requirements, their five best element scores will be used for the purposes of measurement.

6.2.7 A QSFI with an annual turnover of less than R 5 million is measured as an Exempted Micro Enterprise as outlined in the CoGP unless that EME opts to be measured under the QSFI Scorecard.

6.2.8 A financial institution that is a local subsidiary of a multinational or external company (as defined in Section 1 of the Companies Act (Act 61 of 1973, as amended, repealed or superseded)) or branch of a multinational or external company which is precluded in terms of a Global Policy from accommodating domestic ownership participation, will be exempt from the ownership provisions of Paragraph 7 of this Code.

6.2.9 The B-BBEE compliance level of an institution which has been exempted from compliance with any element or sub-element, must be determined by adding its actual points earned for each of the scorecard elements in line with paragraph 8.2 of Code 000, Statement 000 of the CoGP. The B-BBEE compliance level shall be the sum of the actual points earned divided by the total amounts available to it.

6.2.10 All scores achieved by financial institutions under the scorecards in paragraphs 6.2.2 and 6.2.4 must be used to determine the compliance level in line with paragraph 8.2 of Code 000, Statement 000 of the CoGP as set out in paragraph 6.2.4.

6.2.11 If a financial institution is a member of a group, it will be measured and reported on as part of the South African group unless:

6.2.11.1 the financial institution is a listed company or

6.2.11.2 the financial institution opts to be measured as a separate company.

6.2.12 Each financial institution will report annually to the Financial Sector Council on its progress in implementing the provisions of this Sector Code.

6.2.13 The verification of B-BBEE compliance of financial institutions will be undertaken by SANAS accredited B-BBEE verification agencies in accordance with directives issued by the Financial Sector Council from time to time.

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7 The Measurement of the Ownership Element of Broad-Based Black Economic Empowerment

7.1	*Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:
7.1.1	Code 100 Statements 100 to 103; and
7.1.2	Code 800 Statement 801.
7.2	*Applicability of the CoGP:* The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:
7.2.1	Each financial institution will have a target of a minimum of 25% Black Ownership.
7.2.2	A minimum of 15% of the target set in terms of paragraph 7.2.1 must be satisfied by way of direct ownership by Black people.
7.2.3	Financial institutions will have an option to address the direct ownership requirements stated in paragraph 7.2.2 above by achieving either a total of 15% direct ownership or by way of a minimum of 10% direct ownership and by introducing a maximum of 5% Equity Equivalents in the Direct Ownership requirement.
7.2.4	Where the Equity Equivalent option is applied, the following conditions will apply:
7.2.4.1	The distribution of the Equity Equivalent portion must be as follows:
7.2.4.1.1	Enterprise Development[6] and procurement for Co-operatives and Black-owned SMMEs 20%
7.2.4.1.2	Co-operative Financing and Access to Finance[7] 25%
7.2.4.1.3	Targeted Investments 40%
7.2.4.1.4	B-BBEE Transactions 15%
7.2.4.2	The Co-operative Financing and the Access to Financing will be subject to the Financial Access Standards as provided by the Financial Sector Council.
7.2.4.3	Targeted Investments will allow for fungibility of the spending.
7.2.4.4	Greater consideration will be given to B-BBEE Transaction Financing of a broad based nature.
7.2.5	Direct Ownership as contemplated in paragraph 7.2.2 and 7.2.3 should, where possible, meet the principles of B-BBEE Transactions as outlined in paragraph 5.20 and may include:
7.2.5.1	direct ownership in the financial institution as a result of B-BBEE transaction financing;
7.2.5.2	broad-based ownership;
7.2.5.3	disposal of any assets, operations, businesses or subsidiaries by the financial institution as a going concern to Black people;
7.2.5.4	direct shareholding or ownership with control, commensurate with the level of ownership concerned, at subsidiary or divisional level; or
7.2.5.5	joint venture or partnership arrangements.
7.2.6	Any transaction which involves B-BBEE parties acquiring equity on a conditional, deferred basis, with no issue of equity carrying upfront economic interest, shall, for the avoidance of doubt, fail to be counted as direct ownership for the purposes of paragraph 7.2.5 until such time as the equity is actually transferred.

[6] Phase 2 of this gazetting process shall clearly define these terms

[7] Phase 2 of this gazetting process shall clearly define these terms

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7.2.7	A maximum of 10% set in terms of paragraph 7.2.1 may be satisfied by way of Indirect Ownership by Black people at group or subsidiary level. Financial institutions may only score Indirect Ownership points if they have reached a level of 15% Direct Ownership. Indirect Ownership will be measured on a basis to be agreed and approved by the Financial Sector Council.
7.2.8	For the purposes of this Code, Black ownership will be calculated as the Agreed Standard Valuation of the Black interests referred to in paragraph 7.2.5 expressed as a percentage of the Agreed Standard Valuation of the South African operations of the financial institution on the date of the transaction. Where a B-BBEE transaction results in Black people acquiring 100% of an asset, operation, business or subsidiary from a financial institution, the Agreed Standard Valuation of that asset shall be deemed to be the transaction consideration applicable to the B-BBEE transaction concerned, and the aforementioned percentage shall be calculated based on the Agreed Standard Valuation (as defined) of the South African operations on the date of the transaction.
7.2.9	If a financial institution is at least 25% owned by another financial institution, it may, in the calculation of Direct Black Ownership, take into account a portion of the direct Black ownership in that other company based on the percentage shareholding of that other company in the financial institution concerned.
7.2.10	Due to their unique nature, foreign banking groups with a branch structure will have the same target as set out in paragraph 7.2.1, but will be permitted to address that target either
7.2.10.1	by transactions contemplated in paragraphs 7.2.2 and 7.2.3 of this Draft Financial Sector Code or
7.2.10.2	by financing identified B-BBEE transactions in addition to the investment contemplated under B-BBEE Transaction Financing and Targeted Investments. Points and bonus points for such financing will be scored in the same way as if the financing (calculated as a percentage of the agreed standard valuation of the South African operations of the foreign banking group) equated to the same percentage of Direct Ownership in terms of paragraph 7.2.2. At least 25% of this financing must be committed to B-BBEE transactions in the financial sector.
7.2.10.3	Not more than 18 points may be earned in aggregate in terms of 7.2.10.1 and 7.2.10.2. B-BBEE transactions identified in terms of 7.2.10.2 will, for the purposes of this Code, be treated as if they were ownership transactions and shall be governed by all the provisions of paragraph 7 and shall not be measured or treated interchangeably with B-BBEE transactions under B-BBEE Empowerment Financing.

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FSC Ownership scorecard

Core Component of BEE	Indicators	Target Score (2017)	Points
Ownership		25% by 2017	14
Direct ownership: max. of 4 bonus points scored: 1 when direct ownership at 17.5%, 1 at 20%, 1 at 22.5% and 1 at 25%	Listed companies: standard valuation as % of market capitalisation. Non-listed companies: standard valuation as a % of total valuation	Min 15% by 2017	12 + 4 bonus
Direct or indirect ownership in excess of 15	Ditto	10% by 2017	0.5 points at: 17.5% 20%, 22.5%, & 25%

The Financial Sector Code participants agree that further details of the FSC ownership scorecard will be discussed in Phase II. This process will outline the overall measurement criteria which include, but are not limited to, the duration within which the achieved points remain valid, eligible groups and points allocated for each group, points and bonus points allocated for each achieved ownership milestone.

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8 The Measurement of the Management Control Element of Broad-Based Black Economic Empowerment

8.1 *Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:

8.1.1 Code 200 Statement 200; and

8.1.2 Code 800 Statement 802.

8.2 *Applicability of the CoGP*: The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:

8.2.1 The following terms when used in this Code have these meanings:

8.2.1.1 Top Management means employees of a financial institution who are members of the occupational category of "Top Management" as determined using the EE Regulations and as defined Code 200 of the CoGP.

8.2.1.2 Senior Top Management means any Top Management of a financial institution who are appointed by or on the authority of the board to undertake the day-to-day management of that financial institution and who: (i) have individual responsibility for the overall management and for the financial management of that financial institution and (ii) are actively involved in developing and implementing the financial institution's overall strategy, as defined in Code 200 of the CoGP.

8.2.1.3 Other Top Management means any Top Management of a financial institution who do not meet the definitional requirements of the category Senior Top Management.

8.2.2 The measurement principle referred to as the Adjusted Recognition for Gender does not apply to measurement of Management Control contributions under this Code.

8.2.3 If, in terms of a Global Policy to which a financial institution is subject, any board members, executive or senior managers who are foreign nationals and are imposed on the local operation, those personnel will not be taken into account for the purposes of calculating ratios in terms of this paragraph 8.

8.2.4 A financial institution that is a branch of a multinational or external company that does not have a local board of directors will be exempt from the Management Control provisions. They will be measured for Top Management as per paragraph 8.2.1.

8.2.5 Notwithstanding the provisions of paragraph 8.2.3, any person including non-South African citizens serving on the board or the Top Management of a financial institution and not excluded from measurement under that paragraph, shall be subject to the definition of a Black person as stipulated in part 2 of Schedule 1 of Section 9 (1) of the B-BBEE Act.

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8.2.6 The Management Control scorecard applicable to financial institutions is as follows:

Management Control – Measurement Criteria	Weighting	Target
Board Participation		
Voting rights of Black board members as a percentage of voting rights of all board members	0.5	50%
Voting rights of Black women board members as a percentage of voting rights of all board members	0.5	25%
Black executive members of the Board as a percentage of all executive members of the board	1.0	50%
Black women executive members of the Board as a percentage of all executive members of the board	1.0	25%
Top Management		
Black Senior Top Management as a percentage of all Senior Top Management	0.5	40%
Black women Senior Top Management as a percentage of all Senior Top Management	0.5	20%
Black Other Top Management as a percentage of all Other Top Management	2.0	40%
Black women Other Top Management as a percentage of all Other Top Management	2.0	20%
Bonus Points		
Black Independent Non-Executive Board Members as a percentage of all Independent Non-Executive Board Members*	1.0	40%

***As defined in terms of King Report**

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9 The Measurement of the Employment Equity Element of Broad-Based Black Economic Empowerment

9.1 *Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:

9.1.1 Code 300 Statement 300; and

9.1.2 Code 800 Statement 803.

9.2 *Applicability of the CoGP*: The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:

9.2.1 The following terms, when used in this Code, have these meanings:

9.2.1.1 Management means employees of a financial institution who are members of the occupational categories of Senior, Middle and Junior Management as determined using the EE Regulations and as defined in Code 300 of the DTI Codes.

9.2.2 The measurement principle referred to as the "Adjusted Recognition for Gender" does not apply to measurement of Employment Equity contributions under this Code.

9.2.3 No Measured Entity shall receive any bonus points under the Employment Equity scorecard unless they have achieved a sub-minimum of 40% of each of the targets set out on the Employment Equity scorecard in respect of the applicable targets.

9.2.4 The Employment Equity scorecard applicable to financial institutions is as follows:

Employment Equity – Measurement Criteria	Weighting	Target Years 1-2	Target Years 3-7
Black disabled employees as a percentage of all employees	0.5	2.0%	3.0%
Black women disabled employees as a percentage of all employees	0.5	1.0%	1.5%
Black senior management as a percentage of all senior management	3.0	43.0%	60.0%
Black women senior management as a percentage of all senior management	2.0	21.5%	30.0%
Black middle management as a percentage of all middle management	3.0	63.0%	75.00%
Black women middle management as a percentage of all middle management	2.0	31.5%	37.5%
Black junior management as a percentage of all junior management	2.0	68.0%	80.0%
Black women junior management as a percentage of all junior management	2.0	34.0%	40.0%
Bonus Points			
Bonus points for meeting or Exceeding EAP[8] target for senior management	1	87.5%	87.5%
Bonus points for meeting or Exceeding EAP[7] target for middle management	1	87.5%	87.5%
Bonus points for meeting or Exceeding EAP[7] target for junior management	1	87.5%	87.5%

9.2.5 Measured entities should put in place processes to review the reasonability of salaries relative to corporate title and occupational categories with regards to Employment Equity regulations

[8] EAP – The economically active population includes all persons between the ages of 15 and 65 years who are working, or unemployed, and excludes those who are not able to work.

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10 The Measurement of the Skills Development Element of Broad-Based Black Economic Empowerment

10.1 *Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:

10.1.1 Code 400 Statement 400; and

10.1.2 Code 800 Statement 804.

10.2 *Applicability of the CoGP*: The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:

10.2.1 The measurement principle referred to as "Adjusted Recognition for Gender" does not apply to the measurement of Skills Development contributions under this Code.

10.2.2 The Skills Development scorecard applicable to financial institutions is as follows:

Skills Development – Measurement Criteria	Weighting	Target
Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for Black employees as a percentage of the financial institution's leviable amount	2.0	3.0%
Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for Black women employees as a percentage of the financial institution's leviable amount	1.5	1.5%
Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for disabled Black employees as a percentage of the financial institution's leviable amount	0.25	0.3%
Skills Development Expenditure on Learning Programmes specified in the Learning Programmes Matrix for disabled black women employees as a percentage of the financial institution's leviable amount	0.25	0.15%

Skills Development – Learnerships	Weighting	Target
Number of Black employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees	2.0	5%
Number of Black women employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees	2.0	2.5%

10.3 Each financial institution undertakes to develop and report on the following programmes:

10.3.1 career pathing through the provision of the necessary support to Black people at all levels to facilitate progress in their agreed careers;

10.3.2 the implementation of appropriate mentorship programmes within companies in the sector to assist in the rapid development of Black employees;

10.3.3 targeted recruitment to expand the base of potential recruits;

10.3.4 cultural diversity and gender sensitivity programmes at various levels of management in the financial institution, with the intention of promoting a vibrant, enabling and diverse institutional culture; and

10.3.5 where possible, in conjunction with institutions of higher learning, introduce training programmes in line with the NQF requirements and establish undergraduate and post graduate diplomas and degrees in financial services.

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11 The Measurement of the Preferential Procurement Element of Broad-Based Black Economic Empowerment

11.1 *Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:

11.1.1 Code 500 Statement 500; and

11.1.2 Code 800 Statement 805.

11.2 *Applicability of the CoGP*: The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:

11.2.1 The following procurement is measured within the Total Measured Procurement Spend:

11.2.2 **Cost of sales:** all goods and services procured that comprise cost of sales.

11.2.3 **Operational expenditure:** all goods and services procured that comprise operational expenditure.

11.2.4 **Capital expenditure:** all capital expenditure

11.2.5 **Discretionary Stock Brokering Spend**: discretionary stock-brokering spend procured by investment managers on behalf of clients, regardless of whether this spend is recorded in the financial statements of the investment manager.

11.2.6 **Public Sector Procurement:** all goods and services procured from organs of state and public entities listed in schedule 2 and 3 of the Public Finance Management Act, No. 1 of 1999.

11.2.7 **Third-party procurement:** all procurement for a third-party or client where the cost of that procurement is recorded in the measured entity's financial statements

11.2.8 **Labour brokers and independent contractors:** any procurement that is outsourced labour expenditure

11.2.9 **Pension and medical aid administration payments:** payments paid to any post-retirement funding scheme or to a medical aid scheme or similar medical insurer, for its employees, excluding any portions of such contributions to a capital investment of the employee.

11.2.10 **Trade commissions:** any commission or similar payments payable to any other third-party pursuant to the business or trade of the Measured Entity. Insurance broker and intermediary commissions are excluded.

11.2.11 **Empowerment related expenditure:** all goods and services procured in carrying out B-BBEE. The Total Measured Procurement spend does not include the actual contribution as specified in the Codes for Enterprise Development, Socio-economic Development and Empowerment Financing, but does include expenditure incurred in facilitating that expenditure.

11.2.12 **Imports:** all goods and services that are imported or procured from a non-South African source; and

11.2.13 **Intra-group expenditure:** except as provided for in Statement 002, all goods and services from subsidiaries or holding companies of the Measured Entity, except where the group is undertaking a consolidated scorecard.

11.3 Exclusions from Total Measured Procurement Spend:

11.3.1 **Taxes and levies:** any amount payable that represents a lawful tax or levy imposed by an organ of state authorised to impose such levy, including rates imposed by a municipality or other local government;

11.3.2 **Property expenditure:** Any amounts payable in consideration for property acquisitions or rentals where the financial institutions hold such property interests as an investment, on behalf of a third party, rather than for operational purposes;

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11.3.3 **Salaries, wages, remunerations and emoluments**: Any amount payable to an employee as an element of their salary or wages or similar payment made to a director of a Measured Entity;

11.3.4 **Pass-through third-party procurement:** all procurement for a third-party or a client, where the cost of that procurement is recorded in the third-party or client's annual financial statements, but is not recorded in the Measured Entity's annual financials.

11.3.5 Empowerment related procurement:

11.3.5.1 Investments in or loans to an Associated Enterprise;

11.3.6 Imported capital goods or components for value-added production in South Africa provided that:

11.3.6.1 There is no existing local production of such capital goods or components and

11.3.6.2 Importing such capital goods or components promotes further value-added production within South Africa;

11.3.7 Imported goods and services if there is no local production of such goods or services. The following can be grounds, but not the sole grounds, for exclusion of imported goods and services from Total Procurement Spend:

11.3.7.1 Where the imported goods or services carry a brand different to the locally produced goods or services or

11.3.7.2 Where the imported goods or services have different technical specifications to the locally produced goods or services;

11.3.8 broker commissions and commissions paid to insurance intermediaries;

11.3.9 reinsurance premiums;

11.3.10 any items of procurement where the supplier is imposed in terms of a Global Policy for technical (but specifically not commercial) reasons;

11.3.11 inter-entity charges for services rendered by other members of the group that are not measured separately in terms of this Code.

11.4 Financial institutions acknowledge that the specific exclusions referred to in paragraphs 11.2.1 to 11.2.13 are specific benefits included in this Code to the advantage of the financial sector only. Accordingly, financial institutions must at all times include within their portfolio of enterprise development programmes, initiatives targeting Black owned property, brokerage and insurance intermediary businesses.

11.5 The Preferential Procurement scorecard applicable to financial institutions is as follows:

Preferential Procurement – Measurement Criteria	Weighting	Target Years 1-2	Target Years 3-7
B-BBEE Procurement Spend from all Suppliers based on their B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	10.0	50%	70%
B-BBEE Procurement Spend from all Suppliers that are QSEs or EMEs based on their B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	2.0	10%	15%
Procurement Spend on any of the following Suppliers as a percentage of Total Measured Procurement Spend:			
Suppliers that are 50% Black owned	2.0	9%	12%
Suppliers that are 30% Black women owned	1.0	6%	8%

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12 The Measurement of the Socio-Economic Development Element of Broad-Based Black Economic Empowerment

12.1 *Subject matter of this paragraph:* This paragraph relates to the following statements within the CoGP:

12.1.1 Code 700 Statement 700; and

12.1.2 Code 800 Statement 807.

12.2 *Applicability of the CoGP*: The provisions and principles contained in the relevant statements apply to all financial institutions, subject to the following variations:

12.2.1 No contribution to Socio-Economic Development recognised as forming part of a financial institution's contribution to Targeted Investment may be recognised as Socio-Economic Development.

12.2.2 Socio-Economic Development Programmes conceptualised and measured under this Code may include, but will not be limited to, one of the following forms:

12.2.2.1 Education: support for community education facilities, programmes at secondary and tertiary education levels aimed at promoting the industry, bursaries and scholarships, which are oriented towards the hard sciences;

12.2.2.2 Training: community training, skills development for the unemployed, adult basic education and training in communities, financial literacy programmes in communities;

12.2.2.3 Development programmes for youth and other target groups;

12.2.2.4 Environment: support of conservation projects, community cleanup projects, food garden initiatives;

12.2.2.5 Job Creation: job creation projects external to the workplace or any commitments contained in empowerment financing;

12.2.2.6 Arts and culture: support of development programmes, development of new talent;

12.2.2.7 Health: support of community clinics, health programmes in the community; and

12.2.2.8 Sport: support of developmental programmes.

12.2.3 Socio-Economic Development Programmes in South Africa can be funded directly from the philanthropic arms of international institutions situated outside of South Africa (provided that such benefits do not accrue to other jurisdictions).

12.2.4 The Socio-Economic Development scorecard applicable to financial institutions is as follows:

Socio- Economic Development – Measurement Criteria	Weighting	Target
Average annual value of all Socio-Economic Development Contributions made by a financial institution as a percentage of the net profit after tax	3	1.0%

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