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GENERAL NOTICE

NOTICE 408 OF 2015

DEPARTMENT OF TRADE AND INDUSTRY

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

- (a) Issue the following Codes of Good Practice (the codes) under section 9 (1) of the Broad Based Black Economic Empowerment Amendment Act (Act No 46 of 2013).
- (b) **4rm** e that these Codes will come into operation from 1 May 2015.

Dr ROB DAVIS, MP

MINISTER OF TRADE AND INDUSTRY

DATE: 3° / /2015

STATEMENT 003: AMENDED GUIDELINES FOR DEVELOPING AND GAZETTING OF
SECTOR CODES

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

Arrangement of this statement

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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 Broad Based Black Economic empowerment (B-BBEE) Act;
- 1.2 the process for developing and gazetting of Sector Codes under section 9 of the B-BBEE Act;
- 1.3 the status of Transformation Charters and Sector Codes; and
- 1.4 recommend an approach for drawing up Transformation Charters and Sector Codes.

2 PROCEDURE FOR DEVELOPING AND GAZETTING OF TRANSFORMATION CHARTERS

- 2.1 The relevant sector body together with the relevant Line Ministry of the sector seeking to gazette a Transformation Charter under section 12 must:
 - 2.1.1 Apply in writing to the Minister of Trade and Industry; and
 - 2.1.2 Provide evidence of compliance with section 12 of the B-BBEE Act as amended.
- 2.2 The Minister of Trade and Industry may refuse an application to gazette a Transformation Charter if the applicant has failed to comply with section 12 of the B-BBEE Act as amended.
- 2.3 If the Minister of Trade and Industry refuses to grant an application under paragraph 2.2,
 - 2.3.1 The Minister of Trade and Industry must notify the applicant of that decision in writing within two months; and
 - 2.3.2 An applicant may re-apply for the gazetting of that Transformation Charter by revising its submission.
- 2.4 The Minister of Trade and Industry 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, sectorial characteristics or empirical research;
- 3.1.6 a sector code developed in terms of this statement must set targets which are over and above the minimum targets set out in the Generic Codes of Good Practice .
- 3.1.7 the proposed Sector Code may deviate from the thresholds set out in the Generic Codes of Good Practice only where those deviations are justifiable based on sound economic principles, sectorial characteristics or empirical research;
- 3.1.8 the proposed Sector Code may introduce a new additional Element for measurement where such addition is justifiable based on sound economic principles, sectorial characteristics or empirical research;
- 3.1.9 the proposed Sector Code must clearly define its scope of application;
- 3.1.10 There must be support by the Line Ministry responsible for the sector and the Minister of Trade and Industry responsible for the gazette of the Sector Code. There must have been a clear demonstration that the Line Ministry was part of the drafting of the Sector Code and a letter of support must be sent to the Minister of Trade and Industry.
- 3.1.11 No transitional period shall be provided for the implementation of a sector code.
- 3.2 The sector body supported by the Line Ministry of a sector seeking to gazette a Sector Code under section 9 of the Act must:
 - 3.2.1 Apply in writing to the Minister of Trade and Industry;
 - 3.2.2 Indicate the process by which the Sector Code has been developed; and
 - 3.2.3 provide evidence of compliance with section 12 of the B-BBEE Act as amended.
 - 3.2.4 The Minister of Trade and Industry shall in terms of section 9 (5) of the B-BBEE Amendment Act issue for 60 days public comments and inputs a Sector Code as a draft before it is approved and gazetted as a final binding document.
 - 3.2.5 A committee that consist of the Sector Charter Council, Line Ministry and the Department of Trade and Industry shall analyse and consider the incorporation of public comments and inputs from members of the public .

- 3.3 Grounds for refusal to gazette Sector Code:
- 3.3.1 The fundamental principles of any of the Elements of the Generic Scorecard are not adequately addressed as per paragraph 3.1.2 above;
- 3.3.2 If there are deviations in the calculation, methodologies and definitions applicable in measuring B-BBEE compliance as per paragraph 3.1.3 and 3.1.4 above;
- 3.3.3 contains inconsistencies in the Targets and Weightings not fully justified as per paragraph 3.1.5 above ambiguity with regards to sectorial scope of application as per paragraph 3.1.9. above.
- 3.4 Sector Codes must align with any key principles changes or amendment to the Generic Codes as determined by the Minister of Trade and Industry.
- 3.5 Alignment with other amended provisions of the Codes will be in accordance with the procedures as outlined in this statement.

4 STATUS OF TRANSFORMATION CHARTERS AND SECTOR CODES

- 4.1 A section 12 Transformation Charter constitutes a sectoral commitment to promote B-BBEE. It is not legally binding on the applicable sector, organs of state or public and private entities.
- 4.2 Code series 000 to 600 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 as amended.
- 4.3 A measured entity in a sector in respect of which the Minister of Trade and Industry has issued a sector code must be measured in accordance with that sector code.
- 4.4 A section 9 (1) Sector Code is legally binding on the applicable sector, organs of state or public and private entities.

5 COMPLIANCE FOR A GROUP OF COMPANIES

- 5.1 The determining factor for a Holding Company/ Group of Companies' or subsidiary compliance with a Sector Code is the scope of application of the sector code and/or revenue. If a Holding Company/ Group of Companies' or subsidiary derive over 50% of its revenue from a sector where there is a Sector Code then such measured entity will be measured in accordance with the scorecard of that Sector Code.
- 5.2 Where a Holding Company/ Group of Companies' revenue is equally distributed amongst its divisions / subsidiaries such that the Holding Company / Group of Companies' cannot determine under which sector

code it falls, then the Holding Company/ Group of Companies' will be measured in accordance with the Generic Codes.

- 5.3 However, the divisions/subsidiaries of the entity shall be subjected to a Sector Code if they fall or trade under a sector which has a gazetted Section 9 (1) Sector Code.
- 5.4 Despite 5.1,5.2 and 5.3 above, Sector Charter Councils after consulting with the affected entity and with the approval of the Line Ministry and the Department of Trade and Industry, may determine that an entity be subjected to a relevant sector code if that entity is a significant and strategic player in that sector.

6 THE ROLE OF SECTOR CHARTER COUNCILS

- 6.1 The main responsibilities of Sector Charter Councils are to develop the sector codes and to monitor their implementation thereof.
- 6.2 Sector Charter Councils may or are encouraged to be registered as legal entities that exist for non-profit making.
- 6.3 The following represents a recommended model for setting up Sector Charter Councils:
- 6.3.1 equitable composition of stakeholders in the members of the Sector Charter Council;
- 6.3.2 ensuring application of good corporate governance principles in the Sector Charter Council.
- 6.3.3 The Line Ministry has the responsibility to drive the process of establishing a Sector Charter Council with the Sector.
- 6.3.4 The appointment of the Sector Charter Council members shall be approved by the Line Ministry as recommended by the sector stakeholders.
- 6.4 The functions of the Sector Charter Council may include:
- 6.4.1 to provide guidance on sector-specific matters effecting B-BBEE in entities within the sector;
- 6.4.2 to compile reports on the status of broad-based black economic empowerment within the sector, and
- 6.4.3 to share information with sector members, approved accreditation agencies, B-BBEE Commission, B-BEE Presidential Advisory Council, the Line Minister and the Minister of Trade and Industry.
- 6.5 The Sector Charter Councils should report to the Line Ministry, the Minister of Trade and Industry and to the Advisory Council on progress made by the sector subject to the relevant Sector Code. Such reports should typically contain qualitative and quantitative information about sectorial

performance, including details about all the elements of the sector's B-BBEE balanced scorecard.

6.6 Measured Entities that are governed by Sector Codes must submit on an annual basis their B-BBEE Certificate and relevant B-BBEE verification reports to the Sector Charter Councils.

6.7 The funding of the operations of Sector Charter Councils is a joint responsibility between the private sector and the Line Ministry responsible for that particular sector.

7. VARIATION OF INDICATORS IN CODES 200

7.1 A Sector Code may allow the use of indicators that differ from those contained in Code 200 as a means of fixing the relevant Measurement Categories.

7.2 Sectors adopting this approach must:

7.2.1 Consider using indicators that are consistent with the principles contained in the Employment Equity Regulations;

7.2.2 consider all relevant factors such as seniority, expertise, scarcity of skill-set, organisational role and responsibility and geographic location;

7.2.3 base the definition of occupational levels on sound and empirical research undertaken in the sector by a reputable institution; and

7.2.4 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.

7.3 The gazetting of a Sector Code does not affect any employer's obligations to comply with the Employment Equity Act and its regulations.