

BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT SECTION 9(1) FINANCIAL SECTOR CODES OF GOOD PRACTICE

SCHEDULE 1

INTERPRETATION AND DEFINITIONS

1. Interpretation

- 1.1 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.
- 1.2 Affected institution means every financial institution that takes designated investments.
- 1.3 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:
- 1.3.1 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

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

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

2. Definitions

2.1 **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.

2.2 **Black Economic Empowerment Transaction means:**

2.2.1 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

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

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

2.4 **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 Equivalentents.

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

2.6 **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.

2.7 **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.

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

2.8.1 Targeted investment; and

2.8.2 Broad-Based Black Economic Empowerment Transactions.

2.8.3 **Equity Equivalent** means contributions in lieu of the sale of equity by financial institutions that, due to permissible reasons as given in this Code, may comply with

the ownership element of B-BBEE through mechanisms described under Code Series FS100, Statement 103.

- 2.8.4 **Exempted Micro Enterprise (EME)** means an enterprise with an annual turnover of less than R5 million. 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.
- 2.8.5 **Financial Sector Council** means a council established as an independent entity and having responsibility for overseeing the implementation of the Financial Sector Code (FS Code).
- 2.8.6 **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.
- 2.8.7 **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.
- 2.8.8 **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.
- 2.8.9 **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.
- 2.8.10 **Multinational/Foreign Multinational Company** means a company with a business in South Africa and elsewhere, which maintains its international headquarters outside South Africa and did not originate in South Africa.
- 2.8.11 **Local Multinational** means a company with a business in South Africa and elsewhere, which maintains its international headquarters in South Africa or originated in South Africa.
- 2.8.12 **Practice directive** means a public document agreed by the Financial Sector Council from time to time that records further details as to the measurement and/or recognition of contributions to B-BBEE by financial institutions.
- 2.8.13 Principles of B-BBEE transactions:
- 2.8.13.1 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;

- 2.8.13.2 Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;
- 2.8.13.3 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);
- 2.8.13.4 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;
- 2.8.13.5 Initiatives aimed at achieving broad-based empowerment will be promoted. This would include employee ownership, community and collective ownership, and
- 2.8.13.6 Joint ventures or partnership arrangements should be meaningfully structured with equitable portions of the responsibility and benefit to each party.
- 2.8.14 **Qualifying Small Financial Institutions (QSFI)** means a financial institution with designated investments of less than R50 million and an annual turnover with a value of less than R35 million.
- 2.8.15 **SANAS (South African National Accreditation System)** 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.
- 2.8.16 **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:
- 2.8.16.1 **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:
- Transport;
 - Telecommunications;
 - Water, waste water and solid waste;
 - Energy;
 - Social infrastructure such as health, education, and correctional services facilities; and
 - Municipal infrastructure and services.
- 2.8.16.2 **Agricultural Development** involving integrated support for resource-poor Black farmers, through enabling access to and the sustainable use of resources.
- 2.8.16.3 **Affordable Housing** for Black households with a stable income, the amount of which will be determined annually by the Financial Sector Council.
- 2.8.17 **The 'gap' market** means financing of housing and housing developments that falls outside the State housing subsidised market (lower limit) and the private developed housing or housing funding below a gross monthly income of R10, 800 (to be adjusted annually – upper limit).