

For A Level Three Contributor¹³

Certificate No: EME L3 / XXX / Date

<Insert Exempt Micro-Enterprise Entity Name>

Type of entity	Company / Close Corporation / Partnership / Trust / Sole Trader
Registration No.	
Address	

The above mentioned <Auditing Firm/Accounting Officer> is the <Auditor / Accounting Officer> of the above mentioned <Company /Close Corporation / Other entity> appointed from <insert date>.

We completed our audit of the financial statements for the period ended <insert period> on which we expressed an <unqualified / modified> opinion on <insert date>. / We have performed the agreed upon procedures set out in Appendix A¹⁴ for the period ended < insert period> in determining the turnover/income levels and have not performed an audit of the financial statements.¹⁵

The audited/unedited⁹ financial statements of <insert Company / Close Corporation/ Entity Name> for the period ended <insert period> reflected an annual turnover/income less than or equal to R 5 million. Although the abovementioned is the current level of turnover/income and is closely related to the economic indicators, turnover/income may be more or less in future. Consequently, this Certificate does not serve as a guarantee that the income reflected will continue at the same levels.

The beneficial owners (shareholders / members / partners / sole trader) were identified as 50% black owned or 50% black woman owned. (Appendix B¹⁶ sets out the agreed upon procedures performed to determine the ownership percentages held by black persons.)

The entity is a Value-Adding Enterprise as defined in the Codes of Good Practice on Broad-Based Black Economic Empowerment. (If applicable)

The entity is a start up enterprise and this Certificate is only valid for contracts with a single value of less than or equal to R 5 million. Should the contract value be higher than R 5 million please contact the auditor/accounting officer. (If applicable)

Auditor's/Accounting Officer's Signature
 Name of Individual Registered Auditor/Accounting Officer
 Professional designation (if applicable)
 Registered Auditor (if applicable)
 Address

Date of Issue:
Expiry Date:

¹³ This certificate is issued in terms of Government Gazette Vol. 500 No. 29617 dated 9 February 2007.

¹⁴ Agreed upon procedures not included.

¹⁵ Delete whichever is Not Applicable.

¹⁶ Agreed upon procedures not included.

METHODOLOGIES FOR VERIFICATION OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) CODES OF GOOD PRACTICE 100: OWNERSHIP**1. Scope of this section**

- 1.1 This section deals with how a Verification Agency should execute its responsibility in relation to the verification of a measured entity's Ownership element of the B-BBEE Codes of Good Practice.

2. High Level Risks

- 2.1 The most significant risk that verification agencies face in verifying the ownership score is the overstatement of black beneficial ownership. This beneficial ownership includes both the economic interest and exercisable voting rights of black people in the measured entity.

3. Effective Date

- 3.1 This Verification Methodology will come into operation on the date of publication.

4. Objectives

- 4.1 The objectives of this methodology is to guide a Verification Agency to obtain sufficient and appropriate evidence on whether:
- 4.1.1 the enterprise has complied, in all material respects, with the key measurement principles for calculating the Ownership element of the B-BBEE Codes of Good Practice; and
- 4.1.2 the calculations for measuring the various types of enterprises, various types of equity instruments (including members interests in Close Corporations and partnership interests), voting rights and economic interest and realisation points and bonus points of the B-BBEE Codes of Good Practice (Code 100) are correct;

5. Requirements

- 5.1 To determine whether the measured entity meets the criteria under the Ownership element of B-BBEE the Verification Agency shall:
- 5.1.1 Obtain sufficient and appropriate evidence proving that the calculation of net equity value is accurate and prepare a report detailing the method used in the findings.
- 5.1.2 Obtain sufficient and appropriate evidence proving that the voting rights and economic interest in respect of shares carrying preferred rights are properly allocated and classified.
- 5.1.3 Obtain sufficient and appropriate evidence proving that the calculation of Designated Group is not misstated by the measured entity
- 5.1.4 Obtain sufficient and appropriate evidence proving that ownership in the hands of black people in relation to complex structures, sale of assets and equity equivalents is dealt with appropriately.
- 5.1.5 To establish proof as evidence the measured entity meets the criteria under the Ownership element of B-BBEE the Verification Agency shall:

- 5.1.5.1 Obtain a declaration by transferor of a Share from SARS for purposes of verifying the authenticity of the transfer of shares.
- 5.1.5.2 Obtain sufficient and appropriate evidence to determine whether ownership points attributable to any option or related instrument are properly allocated and classified.
- 5.1.5.3 Determine the existence and accuracy of Mandated Investments
- 5.1.5.4 Obtain sufficient evidence to determine that the calculation of Equity Interest excludes foreign operations.
- 5.1.5.5 Obtain a Tax clearance certificate from SARS in respect of foreign investments (e.g. FIA 001 Tax clearance)
- 5.1.5.6 Determine the accuracy and validity of the scorecard.
- 5.1.6 For beneficiaries that are listed as black trace beneficiaries to sufficient and appropriate evidence that the natural people who are beneficiaries qualify as black people in terms of the Codes of Good Practice
- 5.1.7 **For all trusts, employee ownership schemes and broad based ownership schemes:**
 - 5.1.7.1 Review trust or scheme deed to ensure that the stated benefit will always be flowing to black people based on either a fixed percentage or according to a formula; and
 - 5.1.7.2 Ensure that the trust or scheme meets the rules and additional criteria set for the Broad Based Scheme in terms of the Codes.
 - 5.1.7.3 For people who are unemployed, select a sample to trace the individual proof of unemployment in the form of Affidavits
 - 5.1.7.4 For youth, select a sample to trace that the individual is between the age of 18 and 35 in line with the B-BBEE Act.
 - 5.1.7.5 For people with disability, select a sample to trace the individual proof of disability status (e.g. valid disability certificate, evidence of registration to receive a Disability grant from the Department of Social Services)
 - 5.1.7.6 For black people living in rural or underdeveloped areas, select a sample to trace the individual proof of residence in such areas (e.g. letter from the tribal chief, proof of postal address).
 - 5.1.7.7 For black new entrants, obtain proof in the form of Affidavits and the transaction documents or Sales agreements, from the individuals who are identified as black new entrants to confirm that they have not been involved in B-BBEE deals in excess of R20 million, this value must be determined as at the date of purchase or transaction date and not at current market value for all prior B-BBEE deals.
- 5.1.8 **Before the Verification Agency continues with procedures to verify occurrence, accuracy, classification and validity of the entity's score, confirm:**
 - 5.1.8.1 the existence of a declaration in relation to beneficiaries / shareholders / members from SARS in order to verify the movement of shareholders interest.

- 5.1.8.2 if there is any ownership held directly by organs of state or public entities and exclude these from the verification process;
- 5.1.8.3 if there are any third party rights attached to the equity held by black people;
- 5.1.8.4 that the effect of the above mentioned third party rights on the equity held by black people has been established; and
- 5.1.8.5 if or not the equity held by black people has the characteristic of a debt or whether or not debt has been presented in the form of preference shares, debentures or other Ownership derivatives.

5.1.9 **B-BBEE Facilitators**

- 5.1.9.1 Inspect the Government Gazette for notice of the public entity being identified as a B-BBEE facilitator; and
- 5.1.9.2 Inspect the B-BBEE facilitator (e.g. the NEF, IDC, DBSA etc.) status and ensure that it is being applied correctly in the calculation.
- 5.1.9.3 Recalculate the Compliance formula for Voting Rights, Economic Interest, Deemed Net Value, Net Value and Recognition of Ownership after Sale or Loss of Shares by Black Participants.

5.2 **Considerations Specific to Qualifying Small Enterprises**

- 5.2.1 The Verification Agency should comply with all the requirements applicable to the Generic Scorecard including the following:
 - 5.2.1.1 exercisable voting rights and economic interest in black people;
 - 5.2.1.2 economic interest in:
 - 5.2.1.2.1 Black designated groups,
 - 5.2.1.2.2 Black participants in employee ownership schemes,
 - 5.2.1.2.3 Black beneficiaries of broad based ownership schemes
 - 5.2.1.2.4 Black participants in co-operatives
 - 5.2.1.2.5 Black women involvement in ownership
- 5.2.2 When determining the validity of involvement of ownership by black women in the measured entity the Verification Agency should determine the economic interest.
- 5.2.3 Confirm that a maximum of 10% of shareholding by black women can be considered when calculating this indicator.

6. **Application material**

- 7. When determining the level of ownership by the Black People, the Verification Agency can rely on the evidence set below and when determining the accuracy of the scorecard the Verification Agency may perform the following procedures:

7.1 **Voting Rights – Direct Shareholding**

- 7.1.1 Trace the exercisable voting rights in the hands of black people to the share certificates.
- 7.1.2 Trace the exercisable voting rights in the hands of black men and women to a

shareholders agreement or similar document if the entity is not a company.

- 7.1.3 Inspect the shareholders' agreements to identify clauses that can restrict voting rights.
- 7.1.4 Inspect shareholders' agreements to identify clauses regarding the rights of shareholders to appoint directors and any restriction on the voting rights of these directors.
- 7.1.5 Complex group structures may require the verification of the funding arrangements by looking at other entities like the B-BBEE partners audited annual financial statements or obtaining confirmation and supporting evidence of funding arrangements.
- 7.1.6 Interview a sample of the black shareholders to determine whether they understand their voting rights and whether they have exercised such voting rights independently.
- 7.1.7 Where the equity is held by a trust (or employee ownership scheme or broad based ownership scheme), interview the trustees (or equivalent representative of scheme) to ensure that they understand their fiduciary duties and the related exercisable voting rights in the measured entity. Review the election procedures in the first year of existence.
- 7.1.8 Inspect the minutes of the latest shareholders' meeting (or annual general meeting where applicable) to identify the trust's participation.
- 7.1.9 **Where the Flow Through Principle and Modified Flow Through Principle are applicable:**
 - 7.1.9.1 Inspect the organogram to determine the percentages and levels applicable to the black shareholding of the measured entity; and
 - 7.1.9.2 Apply the flow-through or modified flow through principle to calculate the exercisable voting rights of black people based on organogram;
 - 7.1.9.3 Inspect the organogram to confirm the actual black ownership in order to outline the real Voting rights that accrue to black individuals.
 - 7.1.9.4 The Flow through principle must be applied first before the verification agency is able to apply the Modified Flow Through principle in order to establish whether the structure has any entity that is black owned where black people hold more than 50% Economic Interest and black controlled where black people hold more than 50% of voting rights.
 - 7.1.9.5 The Verification agency must ensure that whether in the structure of the Measured Entity one or more of the entities is more than 50% black controlled the Modified Flow Through principle must only be used once in such a chain of ownership.
 - 7.1.9.6 **Mandated Investments**
 - 7.1.9.6.1 When determining that the validity of the mandated investment is included in the ownership calculation the Verification Agent shall obtain confirmation or competent persons report for all recognized mandated investments.
 - 7.1.9.6.2 When determining the validity of the mandated investment for exclusion of

Mandated Investments the Verification Agent should:

- 7.1.9.6.2.1 Obtain confirmation of all Mandated Investments;
- 7.1.9.6.2.2 Inspect share register for all mandated investments held by Collective Investment Schemes, for example Pension Funds, Unit Trusts.
- 7.1.9.6.2.3 Recalculating ownership excluded through mandated investments and ensuring that the ownership does not exceed 40%.

7.1.9.7 **Complex Structures**

- 7.1.9.7.1 Organisational structures of businesses are not always simple. Some entities have complex structures involving holding companies, subsidiaries and associated enterprises. Some entities may be involved in joint ventures.
- 7.1.9.7.2 When determining the validity of Complex structures the verification agent shall the following:
 - 7.1.9.7.2.1 The general rules for voting rights, economic interest and realisation points as detailed above may be used.
 - 7.1.9.7.2.2 The verification agent should enquire whether the measured entity is applying a consolidated B-BBEE scorecard or a Measured Entity level B-BBEE Scorecard.
- 7.1.9.8 For the Recognition of Ownership after sale or loss of shares by black participants the verification agency shall do the following when determining the validity of the continuing benefit:
 - 7.1.9.8.1.1 review transaction agreements to confirm that the holding period exceeds 3 years;
 - 7.1.9.8.1.2 Record the number of years that the transaction is in effect;
 - 7.1.9.8.1.3 Enquire from the black participant as to the circumstances of exit (sale or loss of share)
 - 7.1.9.8.1.4 If the shares are lost, review the agreement between the Measured Entity, Black Participant and a lender in order to ascertain the record of the loan or security arrangement, unless the Measured Entity is the lender and to ensure that recognition does not exceed the holding period.
 - 7.1.9.8.1.5 Recalculate continuing benefits and confirming that it is less than 40 percent of the score on the Ownership Scorecard.
- 7.1.9.8.2 For black participants who have lost or sold their shares, obtain proof of:
 - 7.1.9.8.2.1 acquisition date and the date when the shares were lost or sold;
 - 7.1.9.8.2.2 the percentage of shares held by the participant prior to the sale or loss of shares;
 - 7.1.9.8.2.3 the net value percentage undertaken for the equity instruments sold or lost by the black participant on the date of the sale or loss; and
 - 7.1.9.8.2.4 the most recent B-BBEE Recognition level of the measured entity.

7.2 Broad-based Ownership Schemes, Employee Ownership Schemes and Trusts:

7.2.1 To determine the points to award for the level of Participation the Black People in a Broad-Based Schemes and trusts the Verification Agent shall:

7.2.1.1 recalculate the participation by Black people in a Broad-based Schemes holding rights in a measured entity to ensure that it account for 40% or less of the total points awarded;

7.2.1.2 if it is found that the shareholding by Black people in a Broad-based Schemes accounts for 100% of their points and that the scheme it meet the additional criteria for Broad-Based Schemes and Employee Ownership Schemes as stated in the Codes, the verification agency should confirm that this effect is included in the calculation of voting rights held by the scheme to ensure that 100% of the total points on the ownership scorecard is recognized;

7.2.2 To determine compliance with additional rules set out in Annex 100(B) the verification agency shall:

7.2.2.1 review the Trust Deed or constitution of any B-BBEE scheme to ensure that the beneficiaries or class of beneficiaries are clearly named and that there is no discretion by the Trustees or executive of the Broad-based Scheme to change it;

7.2.2.2 review the latest Trust Deed to ensure that at least 50% of the trustees are black and that 25% of the trustees are black women and that the Chairperson is independent. Consider obtaining annual confirmation from the Master of the High Court in the province of registration.

7.2.2.3 Review the Audited annual Financial Statements of the Management Company or the Trust itself and ensuring that the total expenses do not exceed 15% of the total value received in that year by the Broad-based Scheme.

7.2.2.4 Review the Trust Deed or constitution of any B-BBEE scheme to ensure that the rules defining the distribution of economic interest are in line with the commercial rationale and that more than 85% of the economic interest is being allocated to Black people.

7.2.2.5 Review the trust deed to ensure that upon winding up of the trust all accumulated economic interest will be transferred to the beneficiaries of the scheme or an entity with similar objectives.

7.2.2.6 If the scheme accounts for 100% of the points claimed the verification agency should establish that the scheme meets the additional criteria set up for schemes in the Codes.

7.2.3 To determine compliance with the additional criteria for broad-based schemes the verification agency shall:

7.2.3.1 review the minutes of board meetings and ensure that the scheme is represented on the board and plays an active role as a shareholder; and

7.2.3.2 when determining the validity of the scorecard information the Verification Agent shall comparing employees who hold fiduciary roles in Broad-based schemes, trusts or

employee ownership schemes to the employee records supplied by the measured entity.

7.3 **Private Equity Funds**

7.3.1 When determining the ownership points of a Private Equity Fund the Verification Agent shall the following:

7.3.1.1 that the Private Equity Fund Manager must be a BEE Owned Company as defined in the Codes.

7.3.1.2 More than 50% of any exercisable voting rights associated with the equity instruments through which the Private Equity fund holds rights of ownership, be held by black people. (Refer to Interpretive Guide)

7.3.1.3 More than 50% of the profits made by the Private Equity Fund after realising any investment made by it must by written agreement accrue to black people.

7.3.1.4 More than 50% of the value of funds invested by any private equity fund must at all times be invested in black owned enterprises that were at least 25% black owned before the investment of the Private Equity fund. (Refer to Interpretive Guide)

7.4 **Section 21 Companies and Companies Limited by Guarantee**

7.4.1 When determining the validity of Section 21 Companies and Companies limited by Guarantee the Verification Agent shall the following:

7.4.1.1 A Measured entity may elect to include or exclude Section 21 Companies or companies limited by guarantee for the purposes of measuring ownership in terms of the Codes.

7.4.1.2 A Section 21 Company or company limited by guarantee that houses a Broad-Based Ownership Scheme or an Employee ownership scheme is subject to the provisions governing those types of schemes and not to this paragraph

7.4.1.3 If the Section 21 Company or company limited by guarantee is an exclusion the verification agent must recalculate the ownership to ensure that only up to 40% of the level of the measured entity's ownership has been excluded before calculating the effective voting rights or economic rights.

7.4.2 If the Section 21 Company or company limited by guarantee is an inclusion the verification agent must:

7.4.2.1 obtain a competent persons report estimating the extent of black voting rights originating from the Section 21 company or company limited by guarantee; and

7.4.2.2 apply the criteria as detailed under Broad-Based Ownership Schemes in the Codes.

7.5 **Options and Share Warrants (Ref Para 8 in the Ownership element of the Codes)**

7.5.1 Enquire whether the measured entity has any Options or Share Warrants, if so ascertain and document the details thereof.

7.5.2 Where the voting rights have been imposed by law (e.g. when the rights have

been exercised), such rights will be included in the voting rights calculations for Ownership.

7.5.3 Inspect evidence that the option or share warrants irrevocably transfer the rights to economic interest (e.g. vendor having an option to acquire the B-BBEE shareholders stake at low or no value over time). Such limitation of economic interest must be included in the calculation of ownership score.

7.5.4 The Verification Agency must also recalculate the value of the option, share warrant or derivative instruments as at the date of measurement and add or deduct the value from the Net Economic Interest of the entity's ownership scorecard.

7.6 **For Equity Instrument with preferred rights:**

7.6.1 The entity which has black people holding preference shares should demonstrate the following:

7.6.1.1 The rationale for issuing preference shares as opposed to ordinary shares

7.6.1.2 The structure of the preference shareholding.

7.6.1.3 Are they structured as a debt?

7.6.1.4 If so how is the debt funded e.g. through the enterprise or a third party

7.6.1.5 How long will it take for the debt to be repaid

7.6.1.6 One should note that as a hybrid equity instrument the debt portion cannot be included as part of ownership

7.6.2 The conditions attached to those shares:

7.6.2.1 It is important that the black shareholders are able to exercise their Voting Rights as at the transaction date

7.6.2.2 It is also important to specify how the distribution of economic interest is carried out

7.6.2.3 It is also important to specify what conditions preclude the conversion of the preference shares to ordinary shares, and

7.6.2.4 At who's option are they convertible – if it is at the black shareholder's option then the shares may be taken into account as part of ownership

7.6.2.5 All the conditions above would have to be demonstrated in the form of a written agreement which would stipulate all the rights and restrictions of the black shareholders holding those non-redeemable convertible preference shares.

7.6.3 Enquire whether the measured entity has any equity instruments with preferred rights; if so ascertain and document the details thereof.

7.6.4 For equity instruments identified, inspect the relevant shareholder agreements to ascertain the voting rights and the residual income attributable to those instruments.

7.6.5 All instruments with preferred rights should be added onto the ordinary share capital for the calculation of voting rights, economic interest and net value. There are no blanket inclusions or exclusions of equity instruments with preferred rights under ownership.

7.6.6 Where an instrument illustrates debt characteristics (i.e. where the returns are expressed

as an interest rate similar to what the entity would be able to obtain in the open market), the equity instruments with the preferred rights will be regarded as debt rather than equity until such time as the debt portion is repaid. This affects the net value calculation (Ref Para 7 of the requirements).

7.6.7 In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured under current equity interest. The remainder is measurable as an ordinary equity instrument.

7.7 **Economic Interest**

7.7.1 To determine whether the measured entity meets the criteria for calculating the economic interest points the verify agency has to:

7.7.1.1 Inspect the shareholders' agreements to identify any clauses that restrict economic interest (especially where it is disproportionate to shareholding).

7.7.1.2 In the case of the equity held by black people having the characteristics of a debt, inspect other supporting documents e.g. financing agreement, loan agreement to determine the repayment terms.

7.7.1.3 In the case where the acquisition of the shares by black people was through funding by a third party, determine the repayment terms as well as proof of how much of the loan has been repaid at the time of the verification.

7.7.1.4 Inspect the shareholders' agreements to identify any options (call vs. put options).

7.7.1.5 Enquire from the client the existence of any additional contracts that carry economic interest or options. Consider to obtain written management statement to confirm this.

7.7.1.6 Inspect the Shareholders' Agreements (and Financing Agreements where applicable) for exit clauses which can impact on economic interest for black shareholders.

7.7.1.7 Verify existence of, confirm and review evidence of the impact of all transaction documents on the economic interests of the black shareholders. Transaction documents could include, but is not limited to sales of share agreements, funding agreements, preference share agreement, cession, pledge and option agreement (to determine any possible impact of any of these on the economic interest of the black shareholders). Confirm that the transaction value, date of transaction, terms and conditions of transaction, funding of purchase consideration and conditions precedent have been met.

7.7.1.8 Inspect all transaction documents to ensure that the beneficiaries are entitled to economic interest that is proportionate to their shareholding.

7.7.1.9 In the case of dividend payments, verify existence of the relevant documents to evidence that such dividend payment was indeed paid to the black shareholders

7.8 **For Equity Instrument with preferred rights:**

7.8.1 In addition to the points above the entity which has black people holding preference

shares must demonstrate the following:

- 7.8.1.1 The rationale for issuing preference shares as opposed to ordinary shares
- 7.8.1.2 The structure of the preference shareholding. I.e. Are they structured as a debt
- 7.8.1.3 If so how is the debt funded e.g. through the enterprise or a third party
- 7.8.1.4 How long will it take for the debt to be repaid
- 7.8.1.5 One should note that as a hybrid equity instrument the debt portion cannot be included as part of ownership
- 7.8.2 The conditions attached to those shares:
 - 7.8.2.1 It is important that the black shareholders are able to exercise their Voting Rights as at the transaction date
 - 7.8.2.2 It is also important to specify how the distribution of economic interest is carried out
 - 7.8.2.3 It is also important to specify what conditions preclude the conversion of the preference shares to ordinary shares, and
 - 7.8.2.4 At who's option are they convertible – if it is at the black shareholder's option then the shares may be taken into account as part of ownership
 - 7.8.2.5 All the conditions above would have to be demonstrated in the form of a written agreement which would stipulate all the rights and restrictions of the black shareholders holding those non-redeemable convertible preference shares.
 - 7.8.2.6 Enquire if the measured entity has any equity instruments with preferred rights; if so ascertain and document the details thereof.
 - 7.8.2.7 For equity instruments identified, inspect the relevant shareholder agreements to ascertain the voting rights and the residual income attributable to those instruments.
 - 7.8.2.8 All instruments with preferred rights should be added onto the ordinary share capital for the calculation of voting rights, economic interest and net value. There are no blanket inclusions or exclusions of equity instruments with preferred rights under ownership.
 - 7.8.2.9 Where an instrument illustrates debt characteristics (i.e. where the returns are expressed as an interest rate similar to what the entity would be able to obtain in the open market), the equity instruments with the preferred rights will be regarded as debt rather than equity until such time as the debt portion is repaid. This affects the net value calculation (Ref Para 7 of the requirements).
 - 7.8.2.10 In evaluating an instrument that has a hybrid nature including the characteristics of a debt, only that portion that represents a debt, will be measured under current equity interest. The remainder is measurable as an ordinary equity instrument.

7.9 Realisation points

- 7.9.1 Realisation points are the points awarded on the Ownership scorecard as defined in the Codes.
- 7.9.2 Obtain or perform the valuation in accordance with standard valuation methodology.

- 7.9.3 Inspect the valuation for reasonability, which may include evaluating the following:
- 7.9.3.1 professional competence of the evaluator
 - 7.9.3.2 objectivity of the evaluator
 - 7.9.3.3 source data used
 - 7.9.3.4 assumptions and method used
 - 7.9.3.5 result of the evaluator in terms of the Verification Agency's knowledge of the business
 - 7.9.3.6 Document all steps taken to assess the reasonability of the valuation.
 - 7.9.3.7 Obtain written confirmation of outstanding liability from borrower.
 - 7.9.3.8 Recalculate net economic interest and compare to score provided by client.
 - 7.9.3.9 Confirm ownership fulfilment by awarding the one point based on whether the recalculation on the above yields a result that is greater than 7 and that there are no restrictions on the B-BBEE shares (i.e. that they are not pledged, ceded or in any other way hypothecated).
- 7.10 **Net value**
- 7.10.1 Net value is measured according to the real benefit realised by the black shareholder using preset requirements, rather than losing a large percentage to debt repayment.
 - 7.10.2 Calculating Ownership fulfilment:
 - 7.10.2.1 Obtain evidence that there are no restrictions on the date on which the shares can be sold by the black shareholder or whether the shares have been pledged or ceded to a third party.
- 7.11 **Standard Valuation Manual**
- 7.12 When determining the Standard Valuation of an Asset, Economic Interest or any other instrument or right relevant to measurement of Net value under statement 100 of the Codes using normal valuation methods that represent market practice the verification agent has to inspect the valuation for reasonability, which may include evaluating the following:
- 7.12.1 professional competence of the evaluator;
 - 7.12.2 objectivity of the evaluator;
 - 7.12.3 source data used;
 - 7.12.4 assumptions (ensure that the fair value of assets used is reasonable relative to the age and depreciation of the assets) and method used;
 - 7.12.5 confirmation that all the liabilities are taken into account and any replacement assets are factored into the calculation;
 - 7.12.6 result of the evaluator in terms of the Verification Agency's knowledge of the business; and
 - 7.12.7 document all steps taken to assess reasonability of the valuation.

7.13 Where a B-BBEE Consolidated scorecard is utilised the following may be applied:

- 7.13.1 The scorecard must list the names of the holding company as well as all its subsidiaries to which the B-BBEE scorecard pertains to.
- 7.13.2 Ownership score: only the holding company's B-BBEE ownership contributions count as measured in accordance with statements 100 or 103 as well as points arising from the sale of equity instruments in its subsidiaries in accordance with Statement 102.
- 7.13.3 Management control score (board only): only black members on the board of the holding company can count towards the score for black board participation
- 7.13.4 Management control/ employment equity score (top management and owner-managers only): calculation of the score for these aspects must measure black representation in the holding company as well as all measured subsidiaries
- 7.13.5 Skills development score: calculation of the score for this element must measure skills spend by the holding company as well as all measured subsidiaries
- 7.13.6 Enterprise development score: calculation of the score for this element must measure enterprise development spend by the holding company as well as all measured subsidiaries
- 7.13.7 Socio-economic development score: calculation of the score for this element must measure socio-economic development spend by the holding company as well as all measured subsidiaries
- 7.13.8 Preferential Procurement score: Calculations of the score for this element must measure procurement spend by the holding company as well as all measured subsidiaries.
- 7.13.9 Note that intra-group procurement in group structures cannot be counted as B-BBEE procurement

7.14 Where a B-BBEE Measured Entity Level scorecard is utilised the following may be applied:

- 7.14.1 The B-BBEE scorecard must list the details of the divisional structure and the company to which the division/ business unit belongs;
- 7.14.2 Ownership score: only the B-BBEE ownership contributions of the company to which the measured division/ business unit belongs count for measurement purposes. Contributions that count are those measured in accordance with Statements 100 or 103 as well as points arising from the sale of equity instruments in its subsidiaries in accordance with Statement 102;
- 7.14.3 Management control score (board only): only black members on the board of the company to which the measured division/ business unit belongs can count towards the score for black board participation;
- 7.14.4 Management control/ employment equity score (top management and owner-managers

- measured division/ business unit only;
- 7.14.5 Skills development score: calculation of the score for this element must measure skills spend by the measured division/ business unit only;
- 7.14.6 Enterprise development score: calculation of the score for this element must measure enterprise development spend by the measured division/ business unit only;
- 7.14.7 Socio-economic development score: calculation of the score for this element must measure socio-economic development spend by the measured division/ business unit only;
- 7.14.8 Preferential Procurement score: Calculations of the score for this element must measure procurement spend by the measured division/ business unit only.
- 7.14.9 Note that incomes to an entity level B-BBEE scorecard for divisions, intra-group procurement with the enterprise to which the division or business unit belongs is measurable as per Statement 500.
- 7.15 **Where Exempted Small & Micro Enterprises and Qualifying Small Enterprises are Related Enterprises the following will apply:**
- 7.15.1 They MUST obtain either a consolidated B-BBEE scorecard as if they were a group structure or individual B-BBEE scorecards for each related enterprise if their combined turnover exceeds R5 million per annum;
- 7.15.2 But if their combined turnover is less than R5 million per annum, they can remain exempted from obtaining a B-BBEE scorecard.
- 7.16 **Related Enterprises that are Qualifying Small Enterprises**
- 7.16.1 If their combined turnover exceeds R35 million per annum, they MUST obtain either a consolidated B-BBEE scorecard as if they were a group structure or individual B-BBEE scorecards for each related enterprise;
- 7.16.2 But if their combined turnover is less than R35 million per annum, they can comply only with the requirements of the Qualifying Small Enterprises scorecard in their individual capacity.
- 7.17 **Unincorporated Joint Ventures**
- 7.17.1 Unincorporated joint ventures may obtain a consolidated B-BBEE scorecard as if they were a group structure, provided that such a consolidated B-BBEE scorecard is prepared for every separate venture.
- 7.17.2 Transfer of B-BBEE compliance data on B-BBEE scorecards
- 7.17.3 **The following types of B-BBEE initiatives attach to the underlying assets of the initiating entity:**
- 7.17.3.1 Historical contributions under Code series 600 and 700; and
- 7.17.3.2 Historical contributions arising from Statement 102.

7.17.3.3 Where a measured entity concludes any good faith transaction transferring ownership of all or part of its underlying assets, the measured entity may transfer benefit of those historical contributions to the new ownership of those assets. A written agreement recording the transaction must record:

7.17.3.3.1 The details of contributions transferred on a contribution-by-contribution basis;

7.17.3.3.2 The division between the parties if relevant; and

7.17.3.3.3 Such transfer can only take place once.

8. Statement 102 – Recognition in the Sale of Assets

8.1 When determining the validity of a Sale of Asset the Verification Agent has to determine whether the transaction meets the criteria for ownership recognition by:

8.1.1 analysing the previous years' annual financial statements in order to determine the Sustainability of the business opportunity;

8.1.2 ensuring that the transaction has been concluded at arms length and at market related basis in terms of the associated entities value from the previous year's Annual Financial Statements of the Measured Entity;

8.1.3 evaluating the Sales agreement or any other agreement between the measured entity and the associated enterprise to determine that there are no unreasonable limitations on trade or in determining its clients or customers;

8.1.4 establishing that a transfer of specialised skills has taken place in terms of the agreement between the Measured Entity and the associated enterprise;

8.1.5 determining the Voting Rights, Economic Interest and net value of the associated enterprise refer to the paragraphs detailing this above.

8.1.6 In valuating the associated enterprise as a percentage ownership equivalent in a Measured Enterprise by using this calculation:

8.1.6.1
$$\text{Value of an associated enterprise (resulting from a qualifying transaction)} / \text{value of the measured enterprise.}$$

8.1.7 For additional Methodology refer to the Interpretive Guide and the Codes

9. Statement 103 – The Recognition of Equity Equivalents for Multinationals

9.1 A Verification Agency must use the following process to determine the exclusion of Foreign Operations of Multinational Businesses and South African Multinationals:

9.1.1 obtain segmental report or confirmations of management accounts on the value of foreign operations;

9.1.2 obtain the Income tax on royalties certificate from SARS;

9.1.3 obtain the Income Tax Controlled Foreign Company return from SARS and verify against the annual financial statements for purposes of transfer pricing;

9.1.4 Where necessary, obtain an independent valuation of South African and foreign operations of the entity;

9.1.5 Recalculate foreign operation exclusions;

9.1.6 Express foreign operation as a percentage of the entire operation of the entity; deduct the foreign operation percentage from the denominator of all ownership calculations. (e.g. if the foreign operation represent 20 percent of the entire entity, the applicable ownership base used to calculate the ownership score is reduced from 100 percent to 80 percent) (Ref Para 8 of the requirements)

9.2 **Equity Equivalents**

9.2.1 Obtain and review the certificate of exemption issued by the DTI to the multinational.

9.2.2 Ensure that the certificate is valid by confirming its authenticity directly with the DTI

9.2.3 Review the business plan submitted as part of the application and approval process to the DTI. In particular ensure that the stated milestones have been achieved or exceeded. If they have not been met confirm that this has been communicated to the DTI and that the DTI is satisfied to continue with granting an exemption.

9.2.4 Verify through recalculation and review of supporting evidence that the total cumulative contributions made since the date the exemption were granted.

9.2.5 Obtain or perform the valuation in accordance with the standard valuation methodology as set out in the Codes. Standard Valuation Methodologies include but are not limited to the following:

9.2.5.1 **Discounted Cash Flow** (used where reasonable forecasts are available).

9.2.5.1.1 Inspect the valuation for reasonability, which may include evaluating the following:

9.2.5.1.1.1 professional competence of the evaluator

9.2.5.1.1.2 objectivity of the evaluator

9.2.5.1.1.3 source data used

9.2.5.1.1.4 assumptions (ensure that the forecasts are reasonable with regards to industry norms and historical performance) and method used

9.2.5.1.1.5 result of the evaluator in terms of the Verification Agency's knowledge of the business

9.2.5.2 Document all steps taken to assess reasonability of the valuation.

9.2.5.3 **Price earnings multiple (used when the business is profitable and is applied to sustainable earnings)**

9.2.5.3.1 Inspect the valuation for reasonability, which may include evaluating the following:

9.2.5.3.1.1 professional competence of the evaluator

9.2.5.3.1.2 objectivity of the evaluator

9.2.5.3.1.3 source data used

9.2.5.3.1.4 assumptions (ensure that the PE multiple used is reasonable relative to the equivalent of a listed company or sector average) and method used

9.2.5.3.1.5 result of the evaluator in terms of the Verification Agency's knowledge of the business