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GENERAL NOTICE

NOTICE 991 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:

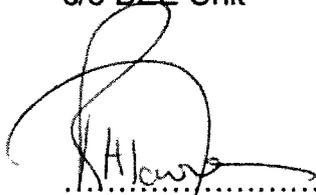
- (a) Issues for public comment, the **DRAFT PROPERTY SECTOR CHARTER** (The Draft Code) as provided for in Code 000 Statement 003 of the Codes of Good Practice under **Section 9 (5)** of the Broad Based Black Economic Empowerment (Act No. 53 of 2003); and
- (b) Invite interested persons and the public to submit comments on the draft code within **60 days** from the date of this publication.

Interested parties are requested to forward their comments in writing for the attention of **Xolisile Zondo** and **Jacob Maphutha**, to the following address (es): Enquiries: 012 394 1609/3430

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

or

The dti Campus
77 Meintjies street
Sunnyside, Pretoria
0002
c/o BEE Unit
or
Private Bag X 84
Pretoria
0002
c/o BEE Unit



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Dr Rob Davies, MP
MINISTER OF TRADE AND INDUSTRY

DRAFT

PROPERTY SECTOR CHARTER

1 Preamble

- 1.1 The property sector commits itself to the implementation of a Transformation Charter within the Property Sector. This commitment was made noting that:
- 1.1.1 Despite significant progress since the establishment of a democratic government in 1994, South African society, including the property sector, remains characterised by racially based income and social services inequalities. This is not only unjust but inhibits South Africa's ability to achieve its full economic potential;
- 1.1.2 The property sector believes that positive and proactive response through the implementation of the principles enshrined in the Property Sector Charter would address inequalities in the sector, unlock the sector's potential and enhance growth.
- 1.2.3. The Constitution of the Republic of South Africa Act 108 of 1996, in particular section 9 in the Bill of Rights relating to equality (and unfair discrimination), states the imperative of redressing historical and social inequalities;
- 1.1.4 BBBEE is a mechanism aimed at addressing inequalities and mobilizing the potential of all South Africans. It will contribute towards sustained economic growth, development and social transformation in South Africa.
- 1.2. This draft Property Sector Charter supports the commitment of the all the stakeholders within the Property Sector that strive for transformed property relations in South Africa and to promote a vibrant and growing *property sector* that reflects the South African nation as a whole, contributes towards development and the establishment of an equitable society.
- 1.3 The draft Property Sector Charter:
- 1.3.1 Constitutes a framework and establishes the principles upon which BBBEE will be implemented in the Property Sector;
- 1.3.2 Is a transformation charter as contemplated in the Broad-Based BEE Act (No 53 of 2003) (BBBEE Act) and the DTI Codes of Good Practice on BBBEE and lays the basis for the development of a code of good practice for the property sector, as envisioned in section 9(1) of the BBBEE Act;
- 1.3.3. Establishes targets and qualitative undertakings in respect of each element of BBBEE; and
- 1.3.4 Outlines processes for implementing the commitments contained in the charter, as well as mechanisms to monitor and report on progress.

2 THE CHALLENGES FACING THE PROPERTY SECTOR

- 2.1 *Property ownership* and the complex system that has evolved around it is the foundation of wealth creation in the world today. Historically, *property* has been viewed as a right. In South Africa, however, *black people* were denied access to productive land through the Native Land Act of 1913 and subsequent discriminatory policy and legislation.
- 2.2 *Black people* could not own *property* nor could they effectively trade on properties. In many cases land was held by Tribal Trusts, which precluded people living on tribal land from obtaining title deeds. These laws affected the ability of *black people* to create or accumulate wealth.
- 2.3 Consequently, significant numbers of South Africans have never in the history of their families experienced formal *property ownership* and its wealth creation benefits. This has had a fundamental impact on the economic potential of South Africa and *black people* in particular.
- 2.4 Despite legislative and policy interventions to eradicate these inequalities, in practice skewed patterns of *ownership*, participation and benefit remain.
- 2.5 *Black people* continue to be significantly under-represented in *ownership of property*, whilst administrative, legal and financial constraints restrict the ability of *black people* to participate in the *property* market.
- 2.6 Commercially, direct *property ownership* is dominated by institutional investors, large private owners, *collective* investment schemes, *property* loan stocks and listed *property* entities, with Government being the largest commercial player. There is limited participation of *black people*, particularly women, in *ownership* and *control* of these entities. The commercially driven activities surrounding *property*, including development, management and sales, rests largely in white-owned hands.
- 2.7 *Enterprises* in the sector have inadequately addressed *employment equity* with the result that the sector continues to be under-represented in terms of race and gender.
- 2.8 There is little investment in *skills development* and limited commitment to workplace training.
- 2.9 At tertiary education level, *property* is inadequately supported as a profession, combined with a lack of appreciation of *property* as a career.
- 2.10 Preferential *procurement* has been implemented insufficiently with few *enterprises* being able to demonstrate any progress in increasing *spend* from targeted suppliers or implementing preferential *procurement* policies.
- 2.11 The sector has not effectively addressed gender equality and particularly black women are under-represented in *ownership*, control, management and in professional skills in the sector.

- 2.12 The sector does little to promote the growth of sustainable *enterprises* and there is almost no *enterprise development* support.
- 2.13 There is a lack of investment and *property* development in *under-resourced areas*, perpetuating service inequalities, exacerbating the limited tradability of these properties and consequently the wealth and capital creation potential of properties.
- 2.14 There is insufficient financing available to address the skewed patterns of ownership. This situation is exacerbated by legal and administrative obstacles to property ownership.

3 OBJECTIVES OF THE PROPERTY SECTOR CHARTER

The charter aims to promote the objectives contained in section 2 of the BBBEE Act as these relate to the Property Sector and in particular, but without limitation:

- 3.1 Promoting economic transformation in the *Property Sector* in order to enable meaningful participation of *black people* including *women*; the youth and people with disabilities;
- 3.2 Unlock obstacles to *property ownership* and participation in the *property* market by *black people*;
- 3.3 Promoting *property* development and investment in *under-resourced areas* which enhances basic infrastructure, encourages investment and supports micro and small enterprises;
- 3.4 Achieve a substantial change in the racial and gender composition of *ownership, control* and *management* and enhance the participation of *black people*, including *black women* and *designated groups* in the *property sector*;
- 3.5 Promote the effective advancement of *employment equity* in the property sector and encourage diverse organisational cultures;
- 3.6 Increase the pool of intellectual capital amongst black people, particularly black women, in the sector by focusing on attracting new entrants and developing appropriate curricula;
- 3.7 Address skills development in a manner that accelerates the advancement of black people, black women, black employees with disabilities with increased investment in the skills development and training of new entrants
- 3.8 Enhance entrepreneurial development and increase the number of BBBEE firms and SMMEs providing *services* and products to the sector whilst promoting sustainable growth of such firms;
- 3.9 Increase the *procurement* of goods and *services* from *BBBEE* suppliers;
- 3.10 Facilitate the accessibility of finance for property ownership and *property* development;

- 3.11 Encourage good corporate citizenship amongst *enterprises* in the sector, including participation in *corporate social investment* projects and adherence to triple bottom line accountability;
- 3.12 Promote investment in the *property sector* and contribute to growth of the *sector*, and
- 3.13 Enhance uniformity and consistency in the application of the principles contained in the charter.

4 SCOPE OF APPLICATION

- 4.1 The Property Sector Charter (including the scorecard incorporated herein) applies to all privately owned enterprises within the Property Sector. In addition, and once gazetted under Section 9 (1) of the BBBEE Act this charter is binding to all organs of state and public entities, organized labour and communities involved with or interested in the Property Sector.
- 4.2 The scope of this charter is applicable but not limited to the following industries:
 - 4.2.1 Residential Property Industry which include:
 - 4.2.1.1 Houses
 - 4.2.1.2 Community Schemes
 - 4.2.1.3 Land for Development
 - 4.2.2 Commercial Property Industry, which include:
 - 4.2.2.1 Office Property Industry;
 - 4.2.2.2 Industrial Property Industry;
 - 4.2.2.3 Leisure Property Industry;
 - 4.2.2.4 Retail Property Industry; and
 - 4.2.2.5 Land for Development

5 FOCUS OF APPLICATION

- 5.1 This charter applies to the South African *property sector*, and in particular to all enterprises engaged in property ownership or the provision of property services, and includes without limitation, practitioners and enterprises engaging in property development. It does not include any property enterprise outside the borders of Republic of South Africa.
- 5.2 The stakeholders all acknowledge that the scope defined in this paragraph 5.1 represents a basis for delineation of the property sector based upon common commercial characteristics.
- 5.3 Subject to any provisions to the contrary contained in any provision of the codes of good practice issued under the BBBEE Act:
- 5.3.1 This charter will be applicable to a subsidiary of a holding company or a division or business unit of a company if the primary business of the subsidiary, division or business unit of that company is dealing property or providing property services, even if the company or holding company, as the case may be, may be bound by or required to comply with the provisions of another charter.
- 5.3.2 Exempted Micro Enterprises (EMEs) will be exempt from obtaining a BBBEE verification certificate and will automatically be awarded a BBBEE recognition level of 4. In the event that their black ownership exceeds 50%, they will be awarded a BBBEE recognition level of 3. Exempted Micro Enterprises are allowed to be measured in terms of the QSE scorecard should they wish to maximize their points and move to the next procurement recognition level.
- 5.4 (CODE 800): Measurement of BBBEE in small Enterprises for the below mentioned property segments, apply the element that is higher within the given segment as shown in the table below.

		ASSET BASED	SERVICE BASED	ESTATE AGENTS/ BROKERS
Qualifying Small Enterprises	Net Assets	R 30 M – R280M		
	Gross Income or Turnover		R5M – R35M	R1M- R35M
	Number of employees		20	5

- 5.5 A Qualifying Small Enterprise (QSE) must select any four of the seven Elements of B-BBEE for the purpose of measurement under the Qualifying Small Enterprise Scorecard contained in code 800. The threshold of the QSE is as per the table 5.4.
- 5.6 The Exempted Micro Enterprise (EME) will be enterprises that qualify for exemption using the above table under 5.4
- 5.7 The Property Sector Charter scorecard element weighting is as follows:

ELEMENT	CODE NUMBERS	WEIGHTING
PROPERTY SECTOR CHARTER		
Ownership	Code 100	20 points
Management Control	Code 200	10 points
Employment Equity	Code 300	15 points
Skills Development	Code 400	15 points
Preferential Procurement	Code 500	20 points
Enterprise Development	Code 600	10 points
Socio-Economic Development	Code 700	2 points
Economic Development		15 points
TOTAL		107points

- 5.8 The BBBEE recognition level of a property-sector enterprise, will be recognised based on the status as indicated in the DTI Codes, Code 000: BEE Status

6 ROLE OF COUNCIL

- 6.1 The sector Charter Council will be established representing all stakeholders. The mandate of the Charter Council will include:
- 6.1.1 To constitute an executive structure with adequate capacity;
- 6.1.2 To oversee and monitor the implementation of the Charter;
- 6.1.3 To receive, consider and approve enterprise annual BBBEE reports;
- 6.1.4 To issue guidance notes on the interpretation and application of the Charter;

- 6.1.5 To prepare an annual report on progress in implementing the Charter; and
- 6.1.6 To liaise with and report to the BEE Advisory Council on transformation of the Property Sector.

7 MONITORING AND REPORTING

- 7.1 Each *enterprise* will submit a BBBEE report annually to the Charter Council. The report, which will be publicly accessible, must contain the *enterprise's* scorecard, verified by an accredited BEE verification *agency* and an account of progress in achieving the qualitative undertakings outlined in the charter.
- 7.2 The first annual report will be for the enterprises first full financial year after the effective date of the charter and must be submitted to the sector charter council within three months after the financial year end.
- 7.3 Between the effective date of the charter and the first reporting date, enterprises will be measured on provisional verifications based on the charter, provided by DTI accredited verification agencies. Once gazetted, the Charter will be binding and enforceable and the verification certificate acquired before the gazetting of the Property Sector Charter will remain valid for 12 months.
- 7.4 After three (3) years of gazette, the Sector Charter Council will comprehensively review progress on the implementation of the charter.
- 7.5 The targets contained in the charter will be valid for ten years. However, the sector has committed to achieve the set targets within five years. After five years a comprehensive review will be undertaken and further targets will be set.
- 7.6 Subject to any provisions to the contrary contained in the Code of Good Practice issued under the BBBEE Act, the performance of small enterprises will be measured out of 107 points on the Property Sector Charter scorecard.

8 OWNERSHIP

- 8.1 To date the commercial activities surrounding *property* continue to reflect inequalities in *ownership*, with little transformation having taken place. The situation is further exacerbated by skewed *ownership* patterns of *property* in general.
- 8.2 The charter aims to address the low levels of black (share) *ownership* in *property enterprises* (including *property services enterprises*), as well as deal with obstacles to *ownership* by black people of *property* assets.
- 8.3 Each *property sector enterprise* commits to achieve the targets within five years:

- 8.3.1 at least 25% ownership and economic interest held by black people and 25% plus one vote exercisable by black people in such enterprises;
- 8.3.2 at least 10% ownership and economic interest held by black women and 10% votes exercisable by black women in such enterprises; and
- 8.3.3 at least 2.5% participation in ownership and economic interest held by broad-based ownership schemes and/or designated groups.
- 8.4 for property owning companies only, the following measurement of net equity (realization points) will be applied as indicated in the table below, whilst for the other areas in the property sector will apply the measurement of net equity (realisation points) as indicated in the Codes of Good Practice.

Year	Percentage
Year 1	3%
Year 2	7%
Year 3	10%
Year 4	15%
Year 5	19%
Year 6	24%
Year 7	30%
Year 8	36%
Year 9	43%
Year 10	50%

- 8.5 Given that majority of the listed share register have a mandated investments that are far beyond 40%, a special consent is given for only property listed companies and Property Unit trusts to cap the mandated investment at 70%. Despite this provision, the cap shall be 40% as in the Generic Codes for those listed companies and Property Unit trusts, unless there is consistent evidence of 60% or more of the mandated ownership three years prior to being verified.

Peculiar cases will be reviewed and assessed on case to case bases via an application to Property Sector Charter Council office and the DTI (BEE Unit). The application would have to provide detailed and full justification that warrants a special concession.