

**CODE 000: BROAD-BASED BLACK ECONOMIC EMPOWERMENT FRAMEWORK**

**STATEMENT 010:  
SECTOR TRANSFORMATION CHARTERS**

**Abstract**

*This statement outlines both the key processes to be followed when formulating a sector transformation charter as well as the key principles that must be applied to harmonise the different charters.*

*Key issues around Charter Councils' composition, powers and reporting mechanisms are also explored. The statement also explores the effects of publishing sector transformation charters in the Gazette, either as a Sector Transformation Charter, as defined in section 12 of the Act, or as a Code of Good Practice, as defined in section 9 of the Act.*

***The BEE Codes of Good Practice are to be applied in the development, evaluation and monitoring of BEE charters, initiatives, transactions and other implementation mechanisms. The statement contains basic principles and essential considerations, as well as guidance in the form of explanatory, and other, material.***

***To understand and apply the basic principles and essential procedures together with the related guidance, it is necessary to consider the whole text of the Codes, not only specific sections of the text that are highlighted. The practitioners cannot depart from the basic principles as set out in the Codes. The Codes need only be applied to material matters.***

**Sector Transformation Charters**

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## **Introduction**

### **Background to Sector Transformation Charters**

1. *Government recognises that its BEE strategy will not be effective if it does not have the support of the private sector. Partnerships between government and the private sector, including trade unions and community-based organisations, represent a key ingredient for the formulation and implementation of BEE programmes at different levels and in different sectors of our economy.*
2. *Partnerships refer to structured collaboration between government and the private sector for the sustainable achievement of BEE. Government will actively seek the establishment of innovative partnerships with the private sector, built around the specific circumstances of different sectors and enterprises. The complexity of the different sectors requires a flexible approach that will allow each sector to determine the form and manner in which it will contribute to BEE within the broad parameters outlined in the legislation.*
3. *Sector charters are one of the forms that such partnerships could take. Such charters would need to include specific mechanisms to achieve BEE objectives in that particular sector or enterprise in a comprehensive and appropriate manner, as well as advising on appropriate measurement indicators and targets to the sector. The Broad-based Black Economic Empowerment Act, no. 53 of 2003 provides for the formulation of transformation charters for particular sectors of the economy.*

### **Purpose of the Codes of Practice**

4. *The purpose of the Codes of Practice is to guide both the public and private sectors in their implementation of the objectives of the Broad-Based Black Economic Empowerment (Broad-based BEE) Act. The Codes of Good Practice provide principles and guidelines that would be used to accelerate Broad-based BEE in a meaningful and sustainable manner. This particular Statement is aimed at highlighting the principles that apply to transformation charters formulated by particular sectors.*

### **Status of the Codes of Practice**

5. *In accordance with section 10 of the Broad-based Economic Empowerment Act No. 53 of 2003, every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant Code of Good Practice issued in terms of the abovementioned Act in:*
- a) determining qualification criteria for the issuing of licences, concessions and/or other authorizations in terms of any law,*
  - b) developing and implementing a preferential procurement policy,*
  - c) determining qualification criteria for the sale of state-owned enterprises and*
  - d) developing criteria for entering into partnerships with the private sector.*
6. *Furthermore, the private sector must take into account the principles and guidance contained in this Statement when formulating or reformulating transformation charters to be in line with the Broad-based BEE Act objectives.*

### **Scope**

7. *This Statement deals with:*
- a) the key qualification criteria to be taken into account before the transformation charter is formulated,*
  - b) the outline of the transformation charter process, and*
  - c) the principles and guidelines to be adhered to by the Charter Councils.*
8. *This Code of Good Practice applies to all transformation charters that are currently in place, in process or that will be contemplated in the future.*

### **Objectives**

9. *The objectives of this Statement are:*
- a) to outline the process to be followed in formulating sector transformation charters,*
  - b) to identify principles to be applied in the harmonisation of the different transformation charters and*
  - c) to describe the process of constituting Charter Councils and prescribe the powers of these Councils.*

## **Definitions and Interpretation**

10. The following terms are used in this Statement with the meanings specified below:

**The Act:** *the Broad-Based Black Economic Empowerment Act, no. 53 of 2003*

**Accredited BEE Rating Agencies:** *is defined in Statement 040: Glossary to the Code of Good Practice*

**The Codes of Good Practice:** *refers to the Codes of Good Practice as contemplated by section 9 of the Act*

**dti:** *Department of Trade and Industry*

**Organ of state:** *as defined in statement 040: Glossary to the Codes of Good Practice*

**The Strategy:** *refers to the Broad-based Black Economic Empowerment Strategy published by the Department of Trade and Industry under section 11 of the Act.*

**Transformation Charter:** *defined in statement 040: Glossary to the Codes of Good Practice*

## **Transformation Charter Process**

11. The sector that interacts and/or transacts with any organ of state in the following areas shall be strongly encouraged, subject to the qualification criteria in paragraph 14, to formulate a sector transformation charter in order to accelerate the fulfillment of the objectives of broad-based BEE. These include sectors which:

- a) *contract with any organ of state for the provision of goods and services,*
- b) *benefit from concessions or trade incentives offered by any organ of state,*

- c) *enter into public or private partnerships with any organ of state,*
- d) *are subject to licensing from any organ of state,*
- e) *are regulated by any organ of state, or*
- f) *have any other economic interaction with any organ of state.*

12. *It is not expected that every sector will develop empowerment charters. However, those sectors outlined in paragraph .11 will be strongly encouraged to develop charters that set specific BEE targets and outline concrete plans to achieve these targets*

13. *The charter formulation process is outlined in Appendix One.*

### **Qualification Criteria**

14. *The qualification criteria for the **sector transformation charter** is as follows:*

- a) *The sector must interact or transact with the organs of state as outlined in paragraph .11.*
- b) *There must be common commercial and other characteristics within the entities operating in the sector which would make it feasible to formulate a sector charter.*
- c) *The sector must be significant in terms of:*
  - i. *the national strategic importance of the sector as determined by government, or*
  - ii. *the volume and value of transactions taking place between the sector and the organs of state collectively - this shall be measured in relation to the total volume and value of transactions taking place within the sector.*

### **Consultation process**

15. *For any transformation charter to be widely accepted as credible, there must be a sufficiently comprehensive consultation process with the relevant stakeholders in the sector. This is necessary to ensure that all the relevant views and suggestions are taken into account before the finalisation of the charter process.*

16. Consultation is a process of interacting with, and informing, the relevant stakeholders of the sector about the objectives, principles and measurement criteria of the sector transformation charter. The consultation process may be undertaken in one or more of the following ways:

- a) a major gathering of the key stakeholders in the sector,
- b) workshops addressing particular issues to be dealt with in the transformation charter,
- c) roadshows around the business boundaries of the sector and/or
- d) other interactive mechanisms that would ensure that the relevant stakeholders were informed and their views acknowledged.

17. The relevant stakeholders may include the following:

- a) key enterprises within the sector,
- b) industry bodies for the sector or the relevant chamber of commerce,
- c) Government, referring to the relevant government department(s) that interface(s) with the particular sector,
- d) labour bodies or the relevant trade unions,
- e) industry watchdogs,
- f) others with a relevant interest in participating in the sector.

18. The relevant stakeholders must be informed and involved in the key strategic processes of the charter process, especially in the following stages:

- a) setting the mandate for the Charter Steering Committee so it can start the charter process,
- b) the outlining of the key principles to be contained in the charter,
- c) the setting of targets for the sector as contained in the BEE Scorecard,
- d) the presenting of the charter to the BEE Council and to Minister of Trade and Industry.

### **Charter negotiation and drafting process**

19. *There must be a balance among the negotiating parties. This means that there must be an equitable representation of the different stakeholders as outlined in paragraph 17 throughout the negotiation process.*
20. *There is a difference between an engagement with the negotiating partners and a consultation with the sectors' relevant stakeholders. The negotiating partners' engagement involves a substantive and intense involvement in the formulating and drafting of the transformation charter's principles and measurement criteria; whereas consultation involves the interaction with, and informing of, all the relevant stakeholders of the output of the negotiating partners' engagement process.*
21. *The lack of resources may make it difficult for all the relevant stakeholders to participate in the negotiation process. However, this may not be used as a mechanism to exclude other participants from the negotiation process. It is incumbent upon all the relevant negotiating stakeholders to invest, both in terms of time and financial resources, in the charter process, as this will have a direct impact on the daily activities of all participants. To alleviate the lack of resources, the sector must find ways to raise the appropriate resources to involve all the stakeholders in the negotiation process, without abrogating the investments that would be made by all the relevant participating stakeholders in the charter process.*
22. *The negotiations must be conducted in good faith with the aim of accelerating the implementation of broad-based BEE.*
23. *In order to efficiently formulate the charter, the participants may decide to appoint a Steering Committee to drive the process forward. This Steering Committee will be the representative body of the sector in all matters relating to the charter. There must be an equitable representation of the sector participants and the relevant stakeholders within the Steering Committee to ensure that the views of the different participants are taken into account.*
24. *The Steering Committee may utilise working groups to explore, in a detailed manner, issues that are contained in the transformation charter. The working groups may be*

*divided according to the elements of the balanced BEE scorecard. Within the working groups there must be an equitable representation of the key stakeholders in the sector.*

*25. The mandate and the powers of the Steering Committee must be prescribed by the sector at the beginning of the charter process. This prescription shall also include the mandate and the powers of the working groups working under the Steering Committee.*

### ***Harmonisation of the different charters***

*26. It is important to ensure that there is comparability among the different charters so as to assess progress made by the different sectors. The key elements of the charter that require harmonisation are:*

- a) the content of the charter,*
- b) indicators for the different elements of the balanced BEE scorecard,*
- c) targets for the different elements of the balanced BEE scorecard and*
- d) the weightings of the different elements of the balanced BEE scorecard.*

### ***Content of the Charter***

*27. Sector charters should incorporate the following:*

- a) the BEE challenges in that sector,*
- b) the sector's vision for achieving BEE targets and timetables,*
- c) the specific mechanisms to be used to achieve BEE targets including financing instruments, skills development and employment equity, preferential procurement and enterprise development, as well as any additional mechanisms appropriate to the specific sector,*
- d) an assessment of the financing required to fund BEE transactions,*
- e) the institutional and management mechanisms that will co-ordinate, facilitate, monitor and evaluate the implementation of the charter, and*
- f) any other relevant issues and commitments relevant to the sector, in order to enable its participants to advance the objectives of broad-based BEE.*

### **Guidelines on the setting of indicators**

28. *The indicators for the different elements of the broad-based BEE Scorecard shall be set out in the particular Code of Practice relating to the element.*
29. *The sectors may suggest different indicators from the ones outlined in the particular Code of Practice if they can show the following:*
- a) the suggested indicator can best measure the sector's contribution to that element of broad-based BEE,*
  - b) the suggested indicator reflects the key drivers within the sector related to that element of broad-based BEE,*
  - c) the suggested indicator is in line with sound economic principles, and*
  - d) reasons to support how the currently required indicator, as per the Code of Practice, does not measure the particular element of broad-based BEE adequately*

### **Guidelines on the setting of targets**

30. *Targets that are contained within the charter must be in line with the recommended targets set out in the Code of Practice on targets.*
31. *There must be adequate justification if a target set in the sector charter scorecard differs significantly from the generic scorecard as presented in Statement 000.*

### **Setting the Broad-Based BEE Scorecard Weightings**

32. *The overall weightings attached to the different elements of the scorecard must follow the recommendation of the dti and the generic scorecard as presented in Statement 000 of the Codes of Good Practice.*
33. *There can be no deviations of more than 10% from the dti's suggested weighting of the different components. There must be adequate justification as to why there should be departure from the suggested weightings.*
34. *The minimum weighting per element of the scorecard should be 5 percent.*

35. *The total weighting for each individual core component, i.e. direct empowerment, human resources development and indirect empowerment, should remain constant as per the generic scorecard in statement 000.*

### **Charter Councils**

36. *The Charter Councils are a useful mechanism to ensure that there is an effective monitoring of charter implementation at the sector level.*

### **Composition of the Charter Councils**

37. *There must be an equitable composition of stakeholders, as outlined in paragraph 17 of the Charter Council.*

38. *Good corporate governance principles must be applied in the daily functions of the Charter Council*

### **Powers of the Charter Council**

39. *The sector must set out the mandate and the powers of the Charter Council in consultation with the relevant stakeholders in the sector. The mandate and the powers of any Charter Council must be set in consultation with the Department of Trade and Industry (dti). Final approval of the mandate and powers of the Charter Council shall rest with the National Government Cabinet, with input from the BEE Advisory Council.*

40. *The functions of the Charter Council may include the following:*

- a) to supply guidance on sector-specific matters affecting BEE to the entities within the sector,*
- b) to compile reports on the status of Broad-Based BEE within the sector, and*
- c) to share information with the national monitoring mechanism and approved accreditation agencies, which can have specific relevance to BEE in the sector.*

41. *The Charter Council **may not** perform the following:*

- a) Adjust or revise the following in the charter:*
  - i. indicators used for the different elements of Broad-based BEE,*

- ii. targets for the different indicators of the elements of Broad-based BEE, or
  - iii. weightings for the different elements of Broad-based BEE.
- b) Override the decisions and interpretations of the dti or the BEE Advisory Council if the sector has material differences in its interpretation of the principles of broad-based BEE.

**Annual Reporting of the Charter Councils to the dti and the BEE Advisory Council**

42. The Charter Councils are required to report the progress made by the enterprises that are subject to the relevant charter, to the dti and the BEE Advisory Council. The reports shall outline the following:

- a) baseline indicators for all the different elements of broad-based BEE,
- b) aggregate scores of all the indicators of the BEE Scorecard for all the enterprises falling within the ambit of the charter,
- c) types of initiatives that are undertaken by the enterprises within the sector,
- d) Other relevant information that would be useful in assessing the state of Broad-based BEE within the sector.

**The publication of sector transformation charters in the Gazette**

43. According to section 12 of the Act, the Minister of Trade and Industry must publish the transformation charter for a particular economic sector in the Gazette, for general information and promote it only if he/she is satisfied that the charter:

- a) has been developed by major stakeholders in that sector; **and**
- b) advances the objectives of the Broad-based BEE Act.

44. In addition, the Minister can elect to publish a transformation charter for a particular sector of economy as a Code of Good Practice in the Gazette, if he/she is satisfied that the charter meets the criteria as stipulated in section 12 of the Act, as well as all principles and requirements in this and other statements of the Codes of Good Practice. Upon its publication as a Code of Good Practice in the Gazette, the charter will assume the same status as a Code of Good Practice as stipulated in section 9 of the Act.

45. *The publication of a sector transformation charter as a sector transformation charter, as defined in section 12 of the Act, in the Gazette, will confirm the draft document's status as a sector transformation charter and should be noted as evidence of the commitment by all stakeholders to promote black economic empowerment in the sector.*

46. *The effect of publication of a sector transformation charter as a Code of Good Practice, as defined in section 9 of the Act, in the Gazette is as follows:*

a) *Enterprises subject to a charter published as a Code of Good Practice in the Gazette, shall be assessed using the BEE scorecard, weightings and targets contained in the sector transformation charter. Should there be any conflicts of principle, however, the principles contained in the broad-based BEE Act, Codes of Good Practice and the strategy document shall override the principles contained in the charter.*

b) *The Charter's BEE Scorecard shall be the measurement criterion used by organs of state and public entities for determining the Broad-based BEE contribution.*

c) *Notwithstanding the publishing of the charter as a Code of Good Practice in the Gazette, Government and other organs of state can elect to apply the generic scorecard as presented in statement 000, instead of the charter scorecard in extenuating circumstances.*

47. *If the charter is not published in the Gazette as a Code of Good Practice, the general measurement criteria contained in the Codes of Good Practice shall be used by an organ of state or a public entity when measuring the BEE status of the enterprises in that sector.*

### **Enterprise Charters and Black Economic Empowerment Plans**

48. *All entities are encouraged to develop their own enterprise charters or economic empowerment plans as part of their commitment to black economic empowerment.*

a) *An enterprise charter represents a detailed plan by the enterprise to achieve the objectives of the Act, the Strategy and the Codes of Good Practice.*

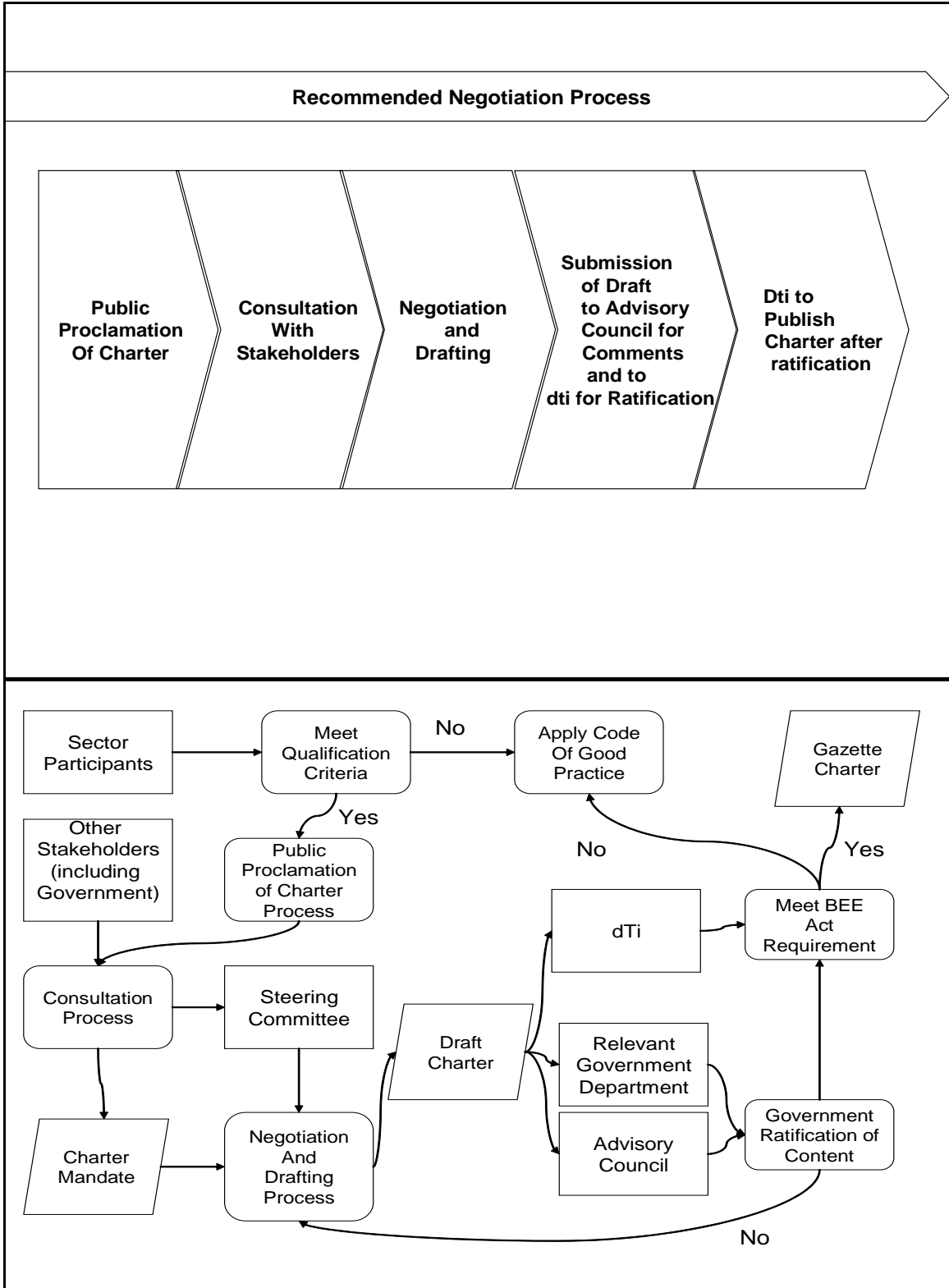
- b) *Enterprise charters will serve as evidence of the voluntary commitment of an enterprise towards black economic empowerment, and will not be gazetted as a Code of Good Practice.*
  
- c) *An enterprise charter must adopt the generic scorecard as presented by the Code of Good Practice, or the scorecard of a relevant sector transformation charter published as a Code of Good Practice in the Gazette.*

## **APPENDIX 1: The CHARTER PROCESS**

*The following diagram illustrates the suggested process to be followed when formulating a charter. It is essential that all stakeholders are informed and consulted during the public proclamation, stakeholder consultation and drafting phases.*

*In order to ensure that the charters are harmonised and achieve the objectives of the BEE Act, a sector transformation charter will need to be submitted to the dti, and the BEE Advisory Council.*

*Once the content of the charter has been ratified by government, and the minister is satisfied that the requirements of s.12 of the Broad-based BEE Act are met, the dti will gazette the charter as a Code of Good Practice applicable to the specific sector.*



**APPENDIX 2: CHARTER LIFE CYCLE:**

