

CODE 200: MANAGEMENT

STATEMENT 200: THE ROLE OF MANAGEMENT CONTROL IN BROAD-BASED ECONOMIC EMPOWERMENT

Abstract

This statement deals with the role of management control in broad-based BEE and with the recognition and measurement criteria of the management and control of enterprises. One of the objectives of the Broad-based Black Economic Empowerment Act is increasing the number of black people that manage, own and control enterprises and productive assets. The objective of this statement is to provide recognition and measurement criteria for the black management and control of enterprises.

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.

**THE ROLE OF MANAGEMENT CONTROL IN BROAD-BASED ECONOMIC
EMPOWERMENT**

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Introduction

- 1. This statement deals with the role of management control in broad-based economic empowerment as well as with the recognition and measurement criteria for the black management control of enterprises.*
- 2. The process of BEE must result in an increase in the ownership and control of the economy by black persons. This means that a significant proportion of black people's ownership of assets and enterprises must be a controlling interest, reflecting genuine participation in decision-making at board, executive management and operational levels, and the assumption of real risk.*

Objectives

- 3. One of the objectives of the Broad-based Black Economic Empowerment Act is increasing the number of black people that manage, own and control enterprises and productive assets.*

4. *The objective of this statement is to provide recognition and measurement criteria for black management control of enterprises.*

Scope

5. *This statement should be applied in the recognition and measurement of black management control by every organ of state and public enterprise in:*
 - (a) *determining qualification criteria for the issuing of licences, concessions or other authorisations 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. *The statement should also be applied to ensure a uniform approach to the black management control aspect of broad-based BEE by: all organs of state, public entities, the private sector, non-governmental organisations, local communities and other stakeholders.*

Definitions

7. **Act** *means the Broad-based Black Economic Empowerment Act 53 of 2004.*
8. **Black People** *is a term that bears the same meaning as defined in the Act, save that it is limited to South African citizens.*
9. **BEE Scorecard:** *a scorecard for the measurement of broad-based black economic empowerment for a particular enterprise as set forth in terms of a Code of Good Practice issued under the Act.*
10. **Enterprise:** *the person(s) conducting a business, trade or profession in the Republic of South Africa and recognised in terms of the laws of the Republic of South Africa, whether or not such enterprise is incorporated.*

11. **Governing Body:** *a conceptual body whose representatives' main tasks consist of determining and formulating policy and strategic planning, or planning, directing and co-ordinating the policies and activities of the enterprise.*
12. **Member:** *(in relation to any form of enterprise), is defined as a person having an equity interest in the equity of that enterprise. Analogous terms and concepts include, but are not limited to:*
- a) *a shareholder of a company limited by shareholding or a shareholder in a co-operative society,*
 - b) *a member of a close corporation,*
 - c) *a partner in a partnership,*
 - d) *a beneficiary in a trading trust, and*
 - e) *the sole proprietor in a sole proprietorship.*
13. **Voting Right:** *(in relation to a member) the level of control exercised by that member over the affairs of the enterprise. The voting right of a member is expressed as the percentage of the votes to which that member is entitled, over the total number of votes to which all members of that enterprise are entitled at a meeting of the members. Analogous terms and concepts include, but are not limited to:*
- a) *the percentage of votes held by a shareholder of a company or a co-operative society at a meeting of the shareholders,*
 - b) *the percentage of votes held by a member of a close corporation at a meeting of the members, and*
 - c) *the percentage of votes held by a partner at a partnership meeting.*
14. **Weighting:** *the percentage of a BEE scorecard allocated to the measurement of management control by black people. In terms of Statement 000 issued as a Code of Good Practice under the Act, the weighting for management control is 10% in the case of BEE scorecards completed in compliance with that statement. Other Codes of Good Practice may specify different weightings for management control for their own purposes.*

15. *The example provided in the Appendix of this statement is inserted for clarification and information only and should not be considered a substantive provision within this statement.*

Key principles of management control

16. *The recognition and measurement of the control aspect as it pertains to Voting Rights in Relation to a Member is dealt with under BEE Statement 100 entitled 'The Role of Equity Ownership in Broad-based Economic Empowerment'.*
17. *This statement deals with the representation of black people in executive management and/ or executive board and board committees.*
18. *Management refers to representation on the governing body of the enterprise.*
19. *Representatives of the governing body of the enterprise are those individuals who are involved in the determination of the strategy of the enterprise as well as in the operational implementation of such strategy. This is the case regardless of whether or not the operational implementation of the strategy is delegated by management to one or more individuals who are not representatives of the board or similar governing body of the enterprise.*
20. *There is a difference between a full-time or executive manager, who participates in the day to day management of the enterprise's affairs and a non-executive manager who has not undertaken any special obligation. The latter is not bound to give continuous attention to the affairs of the enterprise. A non-executive manager's duties are of an intermittent nature, performed at periodic management meetings and at any other meetings which may require the non-executive representative's attention.*

Recognition criteria

21. *In recognising management control of an enterprise, the governing body of the enterprise is considered.*

22. *Acceptance of appointment to the governing body of an enterprise by an individual, as evidenced through relevant secretarial documentation, is not sufficient evidence that the individual concerned participates in the management of the enterprise. In order to be recognised as part of management, the representative of the governing body of the enterprise must be involved in the strategic and operational aspects of the enterprise as detailed in paragraph .19 above.*
23. *In certain instances, even though a representative of a governing body of the enterprise can attend any and all governing body meetings and exercise a vote at these meetings, the ability of the individual to participate in the management control of the enterprise is constrained due to clauses in members' agreements or other, like agreements, which confer a disproportionate amount of management decision making capabilities on certain representatives of the governing body. In such circumstances, the determination of management control should take cognisance of the disproportionate amount of management decision-making capability vested in certain representatives of the governing body of the enterprise.*
24. *An alternate of a governing body representative is not recognised in the determination of the management control of an enterprise, because an alternate of a governing body representative only operates when his/her nominator does not act him/her- self.*

Measurement

25. *The measurement of black management control is calculated as the weighted proportion of black persons represented on the governing body of the enterprise.*
26. *Owing to the difference in operational decision making capabilities of non-executive and executive representatives of the governing body of the Enterprise, as detailed in paragraph .20 above, and the difference in operational decision making influence of different representatives of the governing body of an enterprise, different representatives of the governing body are awarded different*

weightings as per the table below, for the purpose of determining management control.

27. Black women representatives on the governing body will be awarded a 50% higher allocation as illustrated in the table below:

Governing body position	Allocation	Black Women Allocation
Chief Executive Officer Chief Financial Officer Chief Operating Officer Chairman	2.00	3.00
Other executive members of the governing body Non Executive Chairman	1.00	1.5
Non Executive members of the governing body	0.5	0.75

Targets and weighting

28. The black management representation target shall be 40% and shall be recognised and measured in terms of the criteria above. Should an enterprise attain the management control target, the enterprise will be awarded 100% of the weighting as per the BEE scorecard.
29. The maximum score towards the management control target that an enterprise can claim for black representation at the non-executive level is 10%.

APPENDIX 1

Example

Assume Enterprise A's governing body composition is as follows:

Governing body position	Black Male	Black Women	Non - Black
<i>Executive Chairman</i>	-	-	1
<i>Chief Executive Officer</i>	-	-	1
<i>Chief Operating Officer</i>	-	-	1
<i>Chief Financial Officer</i>	-	1	-
<i>Executive</i>	2	1	20
<i>Non Executives</i>	5	4	-
Total	7	6	23

On a weighted basis, the representation is as follows:

Governing body position	Black	Black Women	Non-Black	Total
<i>Executive Chairman</i>	-	-	2.0	2.0
<i>Chief Executive Officer</i>	-	-	2.0	2.0
<i>Chief Operating Officer</i>	-	-	2.0	2.0
<i>Chief Financial Officer</i>	-	3.0	-	3.0
<i>Executive</i>	2.0	1.5	20.0	23.5
<i>Non Executives</i>	2.5	3.0	-	5.5
Total	4.5	7.5	26.0	38

The weighted black representation is as follows:

At the non executive level: $5.5/38 = 14.5\%$ limited to 10%

At all other levels: $6.5/38 = 17.1\%$

Total = $10\% + 17.1\% = 27.1\%$

As a result, black management representation in the example will amount to 27.1%.

Consequently, the enterprise will be able to claim $27.1\%/40\% = 0.6775$ multiplied by the weighting, being 10 i.e. the percentage score for enterprise A is 6.775 %.