BUSINESS UNITY SOUTH AFRICA

DRAFT COMMENTS REGARDING THE REVISED BROAD BASED BLACK ECONOMIC EMPOWERMENT CODES OF GOOD PRACTICE

General comments

BUSA understands the requirement from the DTI to advance transformation by introducing increased criteria for B-BBEE compliance. We also firmly support the point that sustainability in South Africa is only possible if we address the social imbalances created by the past. In this understanding we are an advocate for BEE and have proven our commitment through various initiatives in transformation which is well within reasonable targets of B-BBEE compliance. However, BUSA believes that the impact of these revisions need to be evaluated through a detailed economic and market evaluation. The changes on the codes severely impact on multinational organizations.

BUSA supports the intention to lift the bar on transformation and to link this to the country's developmental objectives. We acknowledge that many of the shifts in the proposed changes to the Codes move in this direction. The extent of the changes, however, is extensive and prohibitive within the timeframes provided. This is particularly so, given the addition of the new sub-minimums. They necessitate considerable structural changes in business and B-BBEE processes and management. The stretch targets appear to be simply **unachievable in the short term and pose a risk of discouraging compliance**. Careful **analysis of the impact** and consequences of the proposals should take place to ensure that they promote and achieve the desired outcome. This would include consideration of the impact on achievement of transformation, impact on industry development, and promoting a conducive environment for entrepreneurship, small business growth and employment. **Transitional provisions** are recommended to ensure buy-in and continued commitment to transformation. It is important to allow companies at least 1 year to transition from the date of final gazette.

BUSA supports the **principle of alignment** with other policy and legislation such as the Employment Equity Act, Skills Development Act and the PPPFA. The proposed alignment in the Codes is, is however, problematic. Provisions relating to employment equity do not align with the legislative requirements on national and regional representation on employment equity in particular. The current formulation of the Codes works as a distinct disadvantage to businesses with head offices in provinces such as KZN and the Western Cape.

Skills Development regulations relied on in the proposed Codes are not in place, in a state of flux and uncertain, and there is an inability to implement which will stifle skills development and in turn the achievement of transformation. Much greater attention to the details and implementation of this is required.

There are a number of instances where there is **unclear terminology** which creates confusion and difficulty of implementation. For example the use of the words 'value-add', is unclear as it does not refer to what is commonly regarded as value added i.e. where products or services are enhanced in value due to the production process. Value add, in the true sense of the words, is incredibly important for the competiveness and growth of the local manufacturing sector. Technological innovation, process improvement, and employment contribution with greater skills are all part of the value add process. The true meaning of value add should be retained.

BUSA makes the following specific general comments.

1. <u>Ownership</u> – While BUSA supports the principle of ownership, BUSA recommends that a Regulatory Impact Assessment be conducted to assess whether companies will be able to comply with this requirement and whether it will or will not increase the cost of compliance. The amendments do not move away from an emphasis on ownership as stated in intentions as voiced by Ministers Manuel and Davies. It is our observation that the net effect is that broad based empowerment is diluted and narrow ownership is promoted. There are added 5 points for ownership, which are not balanced by the elevation of broad based schemes. There is a general concern with the removal of flow-through and the exclusion principle and the impact this will have. There is a danger that with new restrictions, new ways of fronting may emerge, whereas it is far better to deal with the current framework. Changing ownership principles results in uncertainty and procedural barriers to compliance – they should be limited where possible.

2. Enterprise and supplier development

   a. We **support the combining of the enterprise development and procurement** as well as the attempt to align this with national imperatives and the industrial action plan priorities.

   b. Key principles should be maintained for certainty and predictability. There are some instances, however, where key principles are changed with unintended consequences. For example **the inclusion of imports in the denominator** will have considerable and often unfair impact on suppliers that rely on imported components and retailers dependent on the product category and the availability of local product. There is an implicit disadvantage, dependent on product that will prejudice businesses regardless of the efforts made. This could act as a deterrent to transformation or economic growth which would be undesirable. For example a supplier of catering to a hospital naturally procures food locally than for example an x-ray equipment provider which has no limited local procurement options. Similarly a food retailer will be at an advantage relative to an appliance or clothing retailer. A middle ground should be sought that attempts to include imported products only where there is local availability or to otherwise find a solution that smoothes out the inherent disparities of businesses reliant on product. Imports cannot be claimed as exclusion in the revised version of the B-BBEE scorecard. It is our perception that not all imports can be eliminated as imports form the core business of some multinational entities. We recommend that imports to be deductible in quantifying measured procurement spend with a formula to the total value of the exclusion which is then an increased investment requirement. Example – if import exclusion is valued at R100m, 1% of the R100m needs to be dedicated to Socio Economic Development donation over and above the target of 1% of NPAT to qualify for the exclusion.

   c. The **definition of value add** needs to include the true meaning of value add, even if there is a pro-employment component. The economy needs to promote value add in the traditional sense. Value Added Supplier status is defined as a pre-requisite to qualify as a BEE qualifying supplier on a client's broad based scorecard. (Definition = Total salary bill + Net Profit before Tax should be more than ¼ of Revenue) Research on a BEE rated database of 80 000 entities has indicated that only 1/3 of organizations are Value Added Suppliers as recorded on their BEE verification certificates. In order to become a Value Added Supplier, entities will need to drastically revise their business models and in many instances meeting the requirement of the VAS calculation will remain impossible. This implies that any effort by these entities to comply with the B-BBEE codes is fruitless as this one item disqualifies them as being counted as BEE suppliers. If this criterion is gazetted, it may have a negative effect on compliance to BEE which will severely impact on the investment being made through BEE initiatives.

   d. The **move from generic enterprise development** to focusing on organisational and sector suppliers makes it difficult to achieve credit in this regard. Driving supply chain development is an important principle, but so is generic enterprise development. The fundamental principles should not be shifted so dramatically as to make targets unachievable. The principle is moving in the right direction, but there is too much, too soon.

3. Skills Development
   a. The principle of a development and placement recognition is acknowledged as important. It should also be recognised that this is much more difficult to achieve. **Absorption into another business** should be recognised.
   b. The **definition of absorption** must be clarified to explain what is allowed, what is the absorbtion period.
   c. There is a major challenge, generally, as skills environment in constant flux and highly administratively complex.
   d. It is imperative that **Informal training up to at least 15% should be retained**, as proper assessment by a skills accredited body is not achievable in a dynamic and competitive business environment. The red-tape to certify new courses, train assessors and align training to regulatory requirements does not enable speedy development or changes as demanded by business reality. Retail is a particularly dynamic industry. Changes in seasons, products and processes constantly require new training. There is simply not the time, given the current requirements, to obtain course accreditation to deliver this training. The net effect of this will be that, other than long term recurrent training, accreditation will not be achieved. The exclusion of informal training will drive the wrong outcomes in that it will either stagnate training and limit the relevance of occupational training or it will mean an increasing divergence with business training and the alignment to B-BBEE objectives. Informal training should be retained; alternatively the skills environment should be more responsive in enabling current, occupationally relevant skills accreditation.

4. Socioeconomic Development - The requirement for beneficiaries to now be 100% naturalised and black, failing which there is pro-rating is administratively unachievable due to the **difficulty of obtaining this information**. Currently prorating is required under 75%. The experience of companies seeking to obtain data to prorate under 75% has proved prohibitive and companies frequently under record this due to the inability to acquire the data. For example companies contribution to mySchool which supports approximately 14 000 schools are required to obtain information from each school in order to prorate. This is not achievable, and also exceptionally difficult to enforce. This could result in a host of unintended consequences such as inaccurate recording, delays in socioeconomic development initiatives and possibly even a reduction or concentration of socioeconomic contributions. **The regulatory impact should be assessed.**

5. QSE's – There is **too little detail** provided in relation to the minimum requirements. Do they only need to meet 1 of minimum requirements or more? Clarification is required. Ownership element should not be compulsory. We recommend that we have a

staggered approach to compliance: a phase in period. New QSE's should be exempt from ownership in the 1st year of being a QSE so that they can sort out their ownership – therefore exempt from the discounting while they are working on their ownership structure in year 1 of becoming a QSE.

6. Employment Equity Targets – The current calculation in terms of racial demographic representation on Employment Equity and Skills Development is structured in such a way that an entity will lose points if all races are not represented in their employee profile. Regionally it is not possible to have exactly the right profile of demographics represented in employees and smaller businesses may not even have the number of employees prescribed by the calculation in the codes. BUSA proposes that the detail calculation of the demographic representation is re-visited. Recognition should be given on the scorecard for over achievement on the employment of African black people which will imply that the negative impact of a lack of Coloured or Indian employees is neutralized.

Paragraph 3 of Code Series 000, Statement 000 - Application of the Codes	**Comment** Agree
<u>(a) The substitution for paragraph 3.1.1 of the following paragraph -</u> "all organs of state and public entities [listed in schedule 2 or schedule 3 (Parts A and C) of the Public Finance Management Act] ".	
(b) The deletion of paragraph 3.1.2.	Agreed
<u>(c) The substitution for paragraph 3.1.3 of the following paragraph -</u> "3.1.3 [any enterprise] all Measured Entities that undertake any [business] economic activity with [any] all organs of state or public entities;".	Changing [any enterprise] to "Measured Entities" assumes the entity has been measured already, but this paragraph seeks to identify what entity qualifies or must be measured in terms of the code and therefore, by definition, cannot be "Measured" Should not differentiate entities. Entities to include government or organs of State.
<u>(d) The insertion after paragraph 3.3 of the following paragraphs -</u> <u>"3.4 Discounting of the scorecard due to non-compliance with the priority</u> <u>elements</u>	This concept is a hindrance to the continued voluntary participation of many entities, but more specifically, multi nationals. It is a major concern as BBBEE as a policy has driven transformation quite successfully in the short time that the current codes have been in practice. The fact that this is a penalty on top of a penalty also makes this an issue. What this means is that if you don't reach a sub-minimum etc, you already have lost points, which is a penalty in itself, Why are you then liable for a second penalty? This combined with the adjusted recognition levels make this change seem a step too far and will discourage enterprise from complying. The Department should clarify within the Codes that discounting will

	only happen once. This is not currently clear in the document.
<u>3.4.1 For Measured Entities using the generic scorecard</u>	
<u>3.4.1.1 Non-compliance with the threshold requirements for any of the following elements will result in the discounting of a Measured Entity's BEE status level:</u>	See above – Double penalties for the same non compliance. Will drive Multi Nationals and enterprise into an apathetic state. Quite clearly, Multi Nationals will immediately be penalized by this, and not for any wrong doing on their part. We cannot forget that we are part of a Global Economy. This view is simplistic and short sighted and will have the opposite effect of enterprise not complying <u>(Clause 3.4)</u> Presumably the principle is that ALL minimum threshold boxes have to be ticked to avoid being discounted by two levels, although this is not clear. This would be particularly damaging for companies that cannot fulfill the minimum thresholds for any of the three priority elements: Ownership, Skills Development and Enterprise and Supplier Development (ESD). The unintended consequence of this is that a company that knows that it will be unable to meet any one of the threshold minimums and therefore drop two levels, could abandon all transformation efforts, especially if the two level drop takes them down to non-compliance. **<u>Recommendations</u>** In line with the current approach of: 1. encouraging good performance rather than penalising non-compliance; and 2. applying pro-rata methodology to all aspects of scorecard calculation The penalty should be amended as follows: a) A discount of 5 points on the overall scorecard for non-compliance with each of the minimum thresholds on the priority elements

	The minimum thresholds for skills development and ESD are changed to 40% of the total points on those scorecards.
<u>3.4.1.1.1 Ownership;</u>	While BUSA supports the principle of ownership, BUSA recommends that a Regulatory Impact Assessment be conducted to assess whether companies will be able to comply with this requirement and whether it will or will not increase the cost of compliance. Previously both modified flow-through and mandated exclusions were allowed which made scoring on ownership more achievable. Not being allowed to exclude mandated investments will require a thorough (and expensive) evaluation of the actual black participation in the mandated investments to ensure that ownership points are not lost. There is the possibility that this additional cost pressure on companies will result in lower ownership scores but not result in changed behavior i.e. adding more direct ownership. The Department to also clarify how flow-through will be applied in the rest of entities.
<u>3.4.1.1.2 Skills Development; and</u>	Disagree
<u>3.4.1.1.3 Enterprise and Supplier Development.</u>	Disagree
<u>3.4.1.2 The Measured Entity's B-BBEE status level will be discounted by two levels.</u>	Object to the discounting principle – need to find possible recommendations/solutions to replace discounting – companies need something to encourage transformation. • Suggestion give bonus points to those who meet 40% level - maybe bump them up a level if they've met the 40% level • Or discount points e.g. 5 points • Introduce a sliding scale with increasing points from date of gazetting in subsequent years (to be recorded as suggestion #1) then others – rather use carrot than stick approach

	• QSE – suggest 3 point deduction Confirmation is required regarding the discounting – is discounting once off or 3 times because of the 3 priority elements – the codes leave it open to interpretation. These penalties result in"negative marking". There should be incentives in place for achieving compliance, such as Bonus Points, rather than penalties.
<u>3.4.2 For Measured Entities using the Qualifying Small Entities scorecard</u>	QSE Codes (600) are not out yet so we are unsure how they are going to be treated. BUSA suggest that an extension to the commentary period be extended to allow full comprehensive response to this item once released. Small businesses, as the drivers of job creation, should not be burdened with this additional challenge **<u>Recommendations:</u>** Penalty of discounting levels should not apply to QSEs particularly on ownership. The Department to include the transitional period in the document. BUSA would support a 12 months period.
<u>3.4.2.1 Non-compliance with the threshold requirements for the Ownership element and any of the following elements will result in the discounting of a Measured Entity's B-BBEE status level:</u>	The same applies as above
<u>3.4.2.1.1 Skills Development; or</u>	As above
<u>3.4.2.1.2 Enterprise and Supplier development.</u>	As above

3.4.2.2 The Measured Entity's B-BBEE status will be discounted by one level.	As above
3.5 The requirement to submit data to the Department of Labour under the Employment Equity Act is only applicable to designated employers who employ 50 or more employees. Therefore despite 3.2.3, Measured Entities employing fewer than 50 employees will have the option of applying the Management and Employment Equity and Skills Development elements for QSE scorecard."	This reads as follows: If a Generic entity has less than 50 employees that entity may use the EE/MC, SD from the QSE scorecard to score these elements. This needs clarification. Also, there is no Employment Equity element per this same code. Clarity is therefore needed. BUSA supports the needs to align with applicable legislation, however, clarity is required in respect of turnover.
Amendment of paragraph 4 of Code Series 000, Statement 000 – Eligibility of Exempted Micro-Enterprise	
(a) The substitution of paragraph 4.3 of the following paragraph – 4.3. Despite paragraph 4.2, an Exempt Micro Enterprise [qualifies for promotion to a B-BBEE Status of 'Level Three Contributor' having a B-BBEE procurement recognition of 110% under paragraph 6.3 if it is - more than 50% owned by black people or 50% by black women] which is more than 50% black owned qualifies for promotion to a B-BBEE Status of "Level Tow Contributor" having a B-BBEE procurement recognition of 125%"	(4.3&.4.4)EME ownership – women ownership should be enhanced recognition – the code is silent on female ownership. Unless 9.1 extends and covers this, the consequence of the silence will be that future BEE deals will not priorities a gender balance

(b) The insertion after paragraph 4.3 of the following paragraph, and the re-numbering of the subsequent paragraphs accordingly - "4.4 Despite paragraphs 4.2 and 4.3, an Exempted Micro-Enterprise which is 100% black owned qualifies for a promotion to a B-BBEE Status of "Level One Contributor" having a B-BBEE procurement recognition of 135%."	BUSA believes that the Department should ensure tight control to discourage fronting. The Codes are silent on women empowerment, BUSA proposes the following: 100% women – Level 1 100% men – level 2 50% black – level 3
(c) The substitution for re-numbered paragraphs 4.5 and 4.6 of the following paragraphs - <u>"4.5 Despite paragraphs 4.2 and 4.3,</u> Exempted Micro-Enterprises are allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to the next procurement recognition level. 4.6 **[Sufficient evidence of qualification as an Exempted Micro-Enterprise is** **an auditor's certificate or similar certificate issued by an accounting** **officer or verification agency.]** <u>An Exempted Micro Enterprise is only required to obtain a verification certificate once and will retain the awarded BEE status provided it provides, on annual basis, an accounting officer's letter confiJGng the following:</u> <u>4.6.1 Annual Total Revenue of less than R10 million;</u> <u>4.6.2 The level of black ownership."</u> (d) The insertion after paragraph 4.6 of the following paragraph - **" Substitution of paragraph 5 of Code Series 000, Statement 000 - Eligibility as a Qualifying Small Enterprise**	SANAS accredited agencies are governed by R47-02, in terms of which a certificate has a 12-month validity period. A SANAS accredited verification agency cannot issue a certificate for a validity period of 3 years as is required per paragraph 4.6 on page 6 of the Codes. On exempted micro enterprises, although only once a requirement to obtain a certificate, it still adds cost to small enterprise. BUSA request the Department to clarify this requirement in the Technical Assistance Guide in terms of what happens when the entity changes. BUSA would also like the Department to make available tariff if fees for certificates. BUSA welcomes proposals on 4.6. The codes should be more specific regarding no further proof should be required by any authority over and above the provision of 4.6.1 & 4.6.2 EME – i.e. clarify that no other requirements in tendering process will be put on EMEs other than the current requirements – tax clearance, letter from auditor

Code Series 000, Statement 000 is hereby amended by the substitution for paragraph 5 of the following paragraph - AND THE PUBLIC IS INVITED TO GIVE SPECIFIC INPUT ON THE TREATMENT OF BLACK QSEs	Agreed
"5.1 Any enterprise with an annual Total Revenue of between **[R5]** R10 million and **[R35]** R50 million qualifies as a Qualifying Small Enterprise.	While BUSA Agrees with this proposal, we are aware that there might be a need for sector specific thresholds.
5.2 A Qualifying Small Enterprise **[must select any four of the seven Elements of BBBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 800. Where a Qualifying Small Enterprise does not make a selection, its four best element scores will be used for the purposes of measurement]** must comply with all the Elements of BBBEE for the purposes of measurement under the Qualifying Small Enterprise Scorecard contained in Code 600.	Is concerning as code 600 is not yet out for public comment. BUSA requests that the commentary phase be extended for at least 2 months once code 600 is released to the public
Paragraph 6 of Code Series 000, Statement 000 - Start-up Enterprises	

(a) The substitution for paragraph 6.2 of the following paragraph - "6.2 Start up Enterprises are deemed to have **[a]** the qualifying B-BBEE Status **[of "Level Four Contributor having a B-BBEE procurement recognition of 100% under this paragraph]** in accordance to the principles of paragraph 4 of this statement."	Agreed
(b) The substitution for paragraph 6.4 of the following paragraph - "6.4 Despite paragraphs 6.1 and 6.2, Start-up Enterprises must submit a QSE Scorecard when tendering for any contract, or seeking any other business covered by section 10 of the Act, with a value higher than **[R5]** R10 million but less than **[R35]** R50 million. For contracts above **[R35]** R50 million they should submit the generic scorecard. The preparation of such scorecards must use annualised data."	Agreed
Paragraph 7 of Code Series 000, Statement 000 - The Elements of B-BBEE in terms of the Generic Scorecard	
(a) The deletion of paragraph 7.3	Agreed as a consequence of merging EE and MC
(b) The substitution for paragraph 7.4 of the following paragraph - "7.4 The Skills Development Element, as set out in Code series **[400]** 300, measures the extent to which employers carry out	Agreed

initiatives designed to develop the competencies of both black employees and people."	
(c) The insertion after paragraph 7.4 of the following paragraph - "7.5 The Enterprise and Supplier Development Element, as set out in Code series 400, measures the extent to which enterprises buy goods and services from Suppliers with strong B-BBEE procurement recognition levels and who Value-Adding Suppliers, and the extent to which enterprises carry out initiatives intended to assist and accelerate the development and sustainability of black enterprises."	Agreed as far as it promotes supplier development; however BUSA objects to the weighting which favours this over broader Enterprise Development. This amendment will encourage a narrow view to supply chain development as it focuses on downstream. BUSA believes that the end to end view of supply chain development should be considered – businesses should be encouraged to develop also the markets for future access to the economy of those in under-developed areas/communities. New ventures created in vulnerable communities with little infrastructure should be supported by the codes and BBBEE. BUSA recommends that government develops a high level strategy to deal with the broader value chain. The proposed definition of value adds discourages innovation. This proposal will also negatively affect cooperatives. Should companies be able to produce goods locally which were not originally there, BUSA recommends a value point for this. In addition, BUSA recommends transitional milestones for this proposal.
(d) The deletion of paragraphs 7.5 and 7.6.	Agreed
(e) The renumbering of paragraph 7.7 as paragraph 7.6.	Agreed
Paragraph 8 of Code Series 000, Statement 000 - The Generic Scorecard	

(a) The substitution for paragraph 8.1.3 of the following paragraph - "8.1.3 the Code series reference that specify the mechanisms for measurement and calculation of each of the Elements of the scorecard (Code series 100 - **[700]** 600).	Agreed

(b) The substitution for the table in paragraph 8.1 of the following table –

Element	Weighting	Code series reference	**Comment**
Ownership	**[20]** 25 points	100	See general comments in the text
Management Control	**[10]** 15 points	200	
[Employment Equity]	**[15 points]**	**[300]**	
Skills Development	**[15]** 20 points	**[400]** 300	
[Preferential procurement]	**[20 points]**	**[500]**	
Enterprise and Supplier Development	**[15]** 40 points	**[600]** 400	
Socio-Economic Development **[initiatives]**	5 points	**[700]** 500	

(c) The substitution of the table in paragraph 8.2 of the following table –

B-BBEE Status	Qualification	B-BBEE recognition level	**Comment**
8.1.3(c)Recognition Levels –			
Level One Contributor	≥ 100 points on the Generic Scorecard	135%	While BUSA supports the proposed recognition levels, we are of the view that the

			proposed changes are too drastic and will discourage companies to comply as all companies will automatically drop 2 levels and there is no transitional period allowed for with the deletion of section 11 'transitional period'.
Level Two Contributor	≥ **[85]** 95 but <100 points on the Generic Scorecard	125%	L3 and L2 recommend 5 points
Level Three Contributor	≥ **[75]** 90 but <**[85]** 95 on the Generic Scorecard	110%	L3 and L2 recommend 5 points
Level Four Contributor	≥ **[65]** 80 but <**[75]** 90 on the Generic Scorecard	100%	L4 Recommend 5 points
Level Five Contributor	≥ **[55]** 75 but <**[65]** 80 on the Generic Scorecard	80%	Level 5 remain as is(5 points)
Level Six Contributor	≥ **[46]** 70 but <**[55]** 75 on the Generic Scorecard	60%	
Level Seven Contributor	≥ **[40]** 55 but < **[45]** 70 on the Generic Scorecard	50%	L7 recommend 10 points on each level until level 5
Level Eight Contributor	≥ **[30]** 40 but < **[40]** 55 on the Generic Scorecard	10%	L8 should be 10 point increase 40-50 not 15 points The change in the recognition level points spread is counter productive and immediately adjusts compliance of a measured entity without there being any change in the

<table>
<tr><td></td><td></td><td></td><td>measured entity. There seems to be a belief that it is a step too far and that transformation goals are not being met and therefore the solution would be to adjust the goalposts and create (artificially) non compliant companies and thus penalize them as well by reducing their overall level. This will result in a higher level of non-transformation in the Country</td></tr>
<tr><td>Non-Compliant Contributor</td><td>< **[30]** 40 on the Generic Scorecard</td><td>0%</td><td></td></tr>
<tr><td colspan="3">**Paragraph 9 of Code Series 000, Statement 000 - Enhanced recognition for certain categories of black people**</td><td></td></tr>
<tr><td colspan="3">Paragraph 9 of Code Series 000, Statement 000 is hereby amended by the substitution for paragraphs 9.1 and 9.2 of the following paragraphs -</td><td></td></tr>
<tr><td colspan="3">"9.1 black women **[who should]** form between 40% and 50% of the beneficiaries of the relevant Elements of the Generic Scorecard;</td><td>In a Code that uses absolute measures to gauge compliance, using approximations here is inappropriate. Also, the deletion of the words [who should] makes the statement a statement of fact, which it is clearly not.
The Department should explain what relevant elements mean?</td></tr>
<tr><td colspan="3">9.2 black people with disabilities, black youth, black people living in rural areas and black unemployed people **[who must form between 2 and 3%]** form part of the beneficiaries of all Elements of the Generic Scorecard."</td><td>Agreed, but need clarity on what form part of means.</td></tr>
<tr><td colspan="3">**Deletion of paragraphs 10, 11, and 13 of Code Series 000, Statement 000 -**</td><td></td></tr>
</table>

Framework for Accreditation of BEE Verification Agencies	
Code Series 000, Statement 000 is hereby amended by the deletion of paragraphs 10, 11, and 13.	Agree deletion of Paragraph 11. Disagree deletion of 10 and 13 as these are critical factors. A Transitional Period is required for any new codes.
CODE SERIES 100: MEASUREMENT OF THE OWNERSHIP ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Discounting to be reviewed as in its suggested form it is too discouraging see comment on amend of code 000 3.2.1 • No reference to measurement of companies who had black shareholding and black owner sells his shares – they need to say something in the codes • Enhanced private equity provision – clarity needs to be given on how private equity will be recognised • Local content comment – require definition on what this means • EME – clarify that no other requirements in tendering process will be put on them other than the current requirements – tax clearance, letter from auditor • Require clarification on black female – how will the flow through principle address the recognition of black females? • BUSA is concerned of the unintended consequences of the new codes on Multi-nationals wrt ownership, hence a call for a Regulatory Impact Assessment on this. Perhaps a staggered or phased

	in approach for example airlines with bonus points in the beginning for the multi-nationals who move in the right direction in the first two years. Clarity is also required on how the issue of trumping will be dealt with.
paragraph 2 of Code Series 100, Statement 100 - The Ownership Scorecard	
Code Series 100, Statement 100 is hereby amended by the deletion of the table in paragraph 2 and the insertion of the following table -	Where are the Equity Equivalents points for multinationals catered for? This element should be more focused on Broad Based. Merely changing the Bonus Points to Normal points does not achieve this. The reallocation of the fulfillment point into net value points is not consistent with the tone of this code. If accelerating transformation is really the goal, why add one point to an indicator that will allow scoring full points even when the equity held is encumbered due to the effect of graduated targets.

BEE Element	**Indicator**	**Description**	**Weighting Points**	**Compliance Target**	
Ownership	Voting Rights	Exercisable Voting Rights in the Enterprise in the hands of black people	4	25%+ 1 Vote	

		Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%	
	Economic Interest	Economic Interest in the Enterprise to which black people are entitled	4	25%	
		Economic Interest in the Enterprise to which black women are entitled	2	10%	
		Economic Interest of the following black natural people (designated groups) in the enterprise			
		black designated groups;	3	3%	
		black participants in Employee Share Ownership Plan (ESOP);			
		black people in Broad-Based Ownership Schemes; and			
		black participants in Co operatives			
		New Entrants	2	2%	
	Realisation Points	Net Value	8	Refer to Annexe C	

Paragraph 3 of Code Series 100, Statement 100 – Key Measurement Principles	
(a) The insertion after paragraph 3.1 of the following paragraph, and the renumbering of the subsequent paragraphs accordingly -	See comment below
3.2 Threshold Requirements	This principle needs to be removed as it is effective at only driving away foreign investment and will make local measured entities apathetic to compliance. This is too severe for a business with foreign investors to achieve without a transitional period. The minimum should be removed and a

	balance scorecard approach adopted
3.2.1 <u>A Measured Entity must achieve a minimum of 40% of the annual Net Value targets as per Annexure 100 (C) paragraph 4 of this statement in order to avoid discounting of its overall scorecard</u>	Agreed in terms of the measure and the principle. However, 40% seems too high; there is a need to understand impact on different structures. The Codes should still apply even when companies are experiencing a downturn.
3.2.2 <u>Non-compliance with the threshold targets will result in the achieved BBBEE status level being discounted in accordance with paragraph 3.4 in statement 000."</u>	Disagree – covered in comment above
(b)The insertion into renumbered paragraph 3.4 of the following paragraph, and the renumbering of the subsequent paragraphs in paragraph 3.4 accordingly -	See comment below
"3.4.1 <u>A Measured Entity applying the Modified Flow-Through Principle cannot benefit from the Exclusion Principle."</u>	Previously both modified flow-through and mandated exclusions were allowed which made scoring on ownership more achievable. Not being allowed to exclude mandated investments will require a thorough (and expensive) evaluation of the actual black participation in the mandated investments to ensure that ownership points are not lost. There is the possibility that this additional cost pressure on companies will result in lower ownership scores but not result in changed behavior i.e. adding more direct ownership **<u>Recommendations:</u>** Continue to allow the application of both modified flow through and the exclusion principles.

(c) The insertion after renumbered paragraph 3.5.6 of the following paragraph -	
"3.5.7 A Measured Entity applying the Exclusion Principle to Mandated Investments cannot benefit from the Modified Flow-Through Principle."	Agreed
Substitution of paragraph 5 of Code Series 100, Statement 100 - Private Equity Funds	
Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 5 of the following paragraph -	The notion that an asset manager sets the rules is flawed as asset managers are governed by asset management agreements, non-executive directors, market, shareholder representatives, investment committees and mandate. Why have other asset classes been excluded from this black owned asset management notion namely property, equity and bonds etc. Private Equity Fund's role in the market is leveraged buyouts, venture capital, growth capital, distressed investments and mezzanine capital. (high risk lender) Other major institutional investors (Banks, life companies, global fund managers etc) would not easily achieve 50% black ownership and excluded from the recognition of this paragraph. The shift from the measured enterprise being Private Equity Fund to Private Equity Manager doesn't equate to change the fund's investment criteria
"5.1 A Measured Entity may treat any of its ownership arising from a Private Equity Fund as if that ownership were held by black people, where the Private Equity Fund meets the following criteria:	
5.1.1 more than 50% of any of the Private Equity Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership, must be held by black people;	

5.1.2 more than 50% of profits made by the Private Equity Fund Manager after realising any investment made by it, must by written agreement, accrue to black people;	
5.1.3 the term profit in this instance is deemed as profit from the operations of the Private Equity Fund Manager and the carried interest that the Private Equity Fund Manager (and/or its associated entities, provided that more than 50% of the profits of the associated entities accrue to the Private Equity Fund Manager) receives after realising any investment made by it;	
5.1.4 the Private Equity Fund Manager must be a BEE Owned Company as defined; **[and]**	
5.1.5 the Private Equity Fund Manager must seek to invest 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]** under management in companies that have at least a 25% direct black shareholding using the Flow Through Principle.	
5.1.6 It is accepted that the Private Equity Fund Manager can facilitate such direct black shareholding at the time of entering into the transaction should the target company not meet the requirement of a 25% black shareholding.	Agreed
5.1.7 This deteJGnation will be made at each measurement date and the status given to the Private Equity Fund Manager will be applicable for a period of 12 months.	Agreed
5.2 In recognition of fact that it is currently a challenge for Private Equity Fund Managers to find companies to invest in that already have a significant black shareholding, in practice it should be allowed to achieve the 50% target over a period of time based on the formulation detailed below. (It must be noted that this formulation is in line with that of the net value calculation above). This rule will apply to all investments made after 9 February 2007. The commencement date is the later of 9 February 2007 and the date of establishment of a new fund.	Agreed

5.2.1 Within one year from the commencement date, more than 5% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding:	Agreed
5.2.2 Within two years from the commencement date, more than 10% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;	Agreed
5.2.3 From the first day of the third year and the last day of the fourth year from the commencement date, more that 20% of the value of funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;	Agreed
5.2.4 From the first day of the fifth year and the last day of the sixth year from the commencement date, more than 30% of the value of the funds invested by the Private Equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding;	Agreed
5.2.5 From the first of the seventh year and the last day of the eight year from the commencement date, more than 40% of the value of the funds invested by the Private Equity Fund must at all times be invested in the enterprises that have a 25% direct black shareholding;	Agreed
5.2.6 From the first day of the ninth year and beyond from the commencement date, more than 50% of the value of the funds invested by the Private equity Fund must at all times be invested in enterprises that have a 25% direct black shareholding.	Agreed
5.3 It should be noted that the measurement of the 50% of the value of funds invested by any Private Equity Fund that must be invested in enterprises with a 25% direct black shareholding is to be measured with reference to the cost of the investment made by the Private Equity Fund;	Agreed
5.4 In the case of Private Equity Funds that were fully invested prior to 9 February 2007, investments by the fund managers will be considered as being made by black people if the Private Equity Fund Management entities meet the following criteria:	Agreed

5.4.1 More than 50% of any of the Private Equity Fund Manager's Exercisable Voting Rights associated with the Equity Instruments through which the Private Equity Fund holds rights of ownership in a Measured Entity, must be held by black people.	Agreed
5.4.2 More than 50% of the profits accruing to the Private Equity Fund Manager after realizing any investment made by it, must by written agreement, accrue to black people; and	Agreed
5.4.3 Private Equity Fund Manager must be a BEE Owned Company."	Agreed
Paragraph 9 of Code Series 100, Statement 100	Agreed
Paragraph 9 of Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 9.2 of the following paragraph -	
"9.2 An Equity Instrument carrying preferent rights that has the characteristics of a debt, regardless of whether the debt is that of an Enterprise or of a Participant, is an ordinary loan. If the debt is that of a black Participant, it may be subject to measurement under **[Current Equity Interest]** Net Value."	See comment below
Deletion of paragraphs 10 and 11 of Code Series 100, Statement 100	Agreed
Code Series 100, Statement 100 is hereby amended by the deletion of paragraphs 10 and 11.	
Substitution of paragraph 3 of Annexe 100(C) to Code Series 100, Statement 100 - Calculation of Deemed Net Value	Agreed in so far as this is consistent with the change made in the scorecard, however, disagree in principle with the deletion of Paragraph 10 – see comment where appropriate
Paragraph 3 of Annexe 100(C) to Code Series 100, Statement 100, is hereby amended by the substitution for paragraph 3 of the following paragraph -	
"3 Calculation of Deemed Net Value In calculating the "Deemed Net Value" referred to in the formula in paragraph 4 below, the following formula applies:	Agreed
Where	Agreed
A is the Deemed Net Value	
B for the purposes of paragraph 4 below is the value of the Equity Instruments	Agreed

relevant to the calculation, deteJGned on the date of measurement	
B for the purposes of paragraph 5 below is the value of the Equity Instruments relevant to the calculation, deteJGned on the date of sale or loss	Agreed
C for the purposes of paragraph 4 below is the carrying value of any acquisition debts of the relevant black Participants on the date of measurement	Agreed
C for the purposes of paragraph 5 below is the carrying value of any acquisition debts of the relevant black Participants on the date of sale or loss	Agreed
D for the purposes of paragraph 4 and 5 is the value of the Measured Entity on the date of measurement	Agreed
D for the purposes of paragraph 5 below the value of the Measured Entity on the date of sale or loss	Agreed
D for the purposes of the exclusion principle is the value of the measurable portion of the Measured Entity on the date of measurement."	Agreed
Substitution of paragraph 5 of Annexe 100(C) to Code Series 100, Statement 100 - Calculation of the Recognition of Ownership after the Sale or Loss of Shares by Black Participants	Agreed
Annexe 100(C) to Code Series 100, Statement 100 is hereby amended by the substitution for paragraph 5 of the following paragraph -	
"5.1 The calculations in paragraphs **[3.5.1]** 3.6.1 and **[3.5.3]** 3.6.3 use the following formula:	
A=BxCxD	Agreed as a number format change
Where	
A is the percentage of rights of ownership that survive the sale or loss of an Equity Instrument by a black Participant in paragraph **[3.5]** 3.6 of the statement	
B is the percentage of rights of ownership for each of indicators in the ownership scorecard that were attributable to the black Participant immediately before his or her sale or loss	Agreed

C is the Net Value percentage provided for in paragraph 0 above undertaken for the Equity Instruments sold or lost by the black Participant on the date of the sale or loss. The value of the Enterprises is measurable as at the date of **[measurement]** sale or loss	Agreed
D is the most recently deteJGned B-BBEE Recognition Level of the Measured Entity (which must be less than 1-year old) based on its Generic Scorecard result for all Elements other than ownership deteJGned using statement 000."	Agreed
Deletion of paragraph 6 of Annexe 100(C) to Code Series 100, Statement 100 - The Bonus Points	Agreed
Annexe 100(C) to Code Series 100, Statement 100 is hereby amended by the deletion of paragraph 6.	
CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Agreed
Amendment of heading of Code 300, Statement 300 - the General Principles for measuring Employment Equity	
CODE SERIES [3]00: MEASUREMENT OF THE EMPLOYMENT EQUITY ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Training of people alone does not guarantee employment or promotion. Therefore skills cannot function in isolation otherwise there won't be any direction to training interventions and business people will train for the sake of training. BUSA requires clarity on how alignment will be treated and what it means. BUSA supports alignment which provides seamless reporting. In addition, BUSA proposes strengthening of the capacity of Inspectorates to support enforcement.
CODE SERIES 200: MEASUREMENT OF THE MANAGEMENT CONTROL ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	

STATEMENT [2]00: THE GENERAL PRINCIPLES FOR MEASURING MANAGEMENT CONTROL	
STATEMENT 200: the general Principles for measuring MANAGEMENT control	
Paragraph 2 of Code 300, Statement 300 - Employment Equity Scorecard	Agreed
Paragraph 2 of Code 300, Statement 300 is hereby amended by the substitution for paragraph 2.1, 2.2 , 2.3, 2.4 and introduction of 2.5 of the following	
2.1 The following table represents the indicators and method for calculating a score for Management Control under this statement:	Agreed
	Agreed

Measurement Category & Criteria	Weighting points	Compliance targets		
		Years 0- 5	Years 6 - 10	
2.1.1 Black Disabled Employees as a percentage of all employees	2	2%	3%	
2.1.2 Black employees in Senior Management as a percentage of all such employees using the adjusted recognition for gender	5	43%	60%	
2.1.3 Black employees in Middle Management as a percentage of all such employees using the adjusted	4	63%	75%	

recognition for gender				
2.1.4 Black employees in Junior Management as a percentage of all such employees using the adjusted recognition for gender	4	68%	80%	
2.1.5 Bonus points for meeting or exceeding EAP targets in each category	3			

Measurement Category & Criteria	Weighting points	Compliance targets	
2.1 Board Participation:			
2.1.1 Exercisable voting rights of black board members as a percentage of all board members	2	50%	Agreed and BUSA would support recognition for companies grooming board members. Need to develop and maintain a database where qualified pool of board members will be accessed and incentivize new placements.
2.1.2 Exercisable voting rights of black female board members as a percentage of all board members	1	25%	Agreed
2.1.3 Exercisable voting rights of Executive Black member of the board as a percentage of all such employees	2	50%	Agreed
2.1.4 Exercisable voting rights of Executive Black female member of the board as a percentage of all such employees	1	25%	Agreed
2.2 Top Management:			
2.2.1 Black Top management as a percentage of all such employees	2	60%	Agree in principle
2.2.2 Black female Top management as a percentage of all such employees	1	30%	Agree in principle

<u>2.3 Senior Management</u>			
2.3.1 Black employees in senior management as a percentage of all such employees	1	60%	Agree However, the targets at senior management are **60% for Black and 30% for Black females** and both weighing 1 point each. **Targets set are too high for 1 point** in that companies will not be motivated to put much effort in once the 1 mark point has been achieved. **<u>Recommendations:</u>** Weighting for levels as per paragraph **2.3 and 2.4 be increased to be in line with the targets.** DTI to confirm if **the gender recognition on middle management has been removed.**
2.3.2 Black female employees in senior management as a percentage of all such employees	1	30%	Agree
<u>2.4 Middle Management</u>			MM not sub-divided into black and black female as in SM. What are the targets for women in Middle Management?
2.4.1 Black employees in professionally qualified and experienced specialists and mid-management as a percentage of all such employees	2	75%	Agree BUSA is concerned that Junior Management has been deleted which is where the pool is coming from. Junior management should be included with a higher target, 80% for 2 points, and women target of 40% for 1 point. According to the Government Gazette of 5

			October 2012 the targets for Black females at middle management are not included when on other media the targets and weighting for Black females is included. Clarity if the gender recognition on this level is included or not is therefore required. If included then the targets for **Black of 75% and Black females 38%** for 1 point each is not in line with the targets
<u>2.5 Disabled Employees</u>			
2.5.1 Black disabled employees as a percentage of all employees	2	2%	Agree The current principle of separating recognition of Black and Black women targets is a good way of making sure that companies prioritize the employment of disabled people especially of Black women. Stats have revealed that a **lower percentage of women in general hold high positions in the workplace, even worse for Black disabled women.** In terms of the revised codes the gender recognition of **Black disabled women has been removed.** The removal will compromise the representation of these women in the workplace and business will no longer prioritize the employment of Black disabled women

			<u>Recommendations</u> **Bring back the gender recognition of Black females on this category as a priority.** This will allow disabled women to have access in the workplace and therefore be able to contribute to the economy of the country, or As it has been proposed with the other levels to include **separate targets for Black disabled women**
<u>"2.2 The compliance targets for the 2.3 and 2.4 of the Management Control scorecard are based on the overall demographic representation of black people as defined. For scoring purposes, the targets should be further broken down into specific criteria according to the different race sub groups within the definition of black in accordance with the Employment Equity Act requirements on equitable representation and weighted accordingly."</u>			No problem with equitable distribution of black people, however, to apply national demographics as a target is not appropriate given that a black person is still a black person as defined. Whether he is empowered in Cape Town, Durban or JHB should have no bearing on the score. Using National demographics may have the effect of placing entire communities out of work. This also creates some Constitutional issues where exclusion from a position of employment will be based on race, where currently it is about inclusion of black people it also complicates the scorecard and recording of such in enterprises. There has been **no information** from the revised codes of the change to the revised Management Control minimum threshold; in order for business to align there needs to be

	some clarity on this matter if there is going to be a change. Whilst waiting for feedback we would assume that the current threshold will not change **Recommendations** **DTI to confirm the revised threshold** on Management Control.
paragraph 3 of Code 200, Statement 200 - Common Examples of Top Management	
Paragraph 3 of Code 200, Statement 200 is hereby deleted: [The inclusion of the following examples of Top Management is for guidance purposes only]	
3.1 Senior Top Management positions include the chief executive officer, the chief operating officer, and the chief financial officer and other people holding similar positions.	Agree
3.2 Other Top Management positions include the chief information officer, the head of marketing, the head of sales, the head of public relations, the head of transformation, the head of human resources and other people holding similar positions.]	Agree
Paragraph 4 of Code 200, Statement 200 - Key Measurement Principles	Agree

4.3 A Measured Entity receives points by meeting the targets for participation of black people and black women at Board, Top Management, Senior Management, Middle Management level, and Black Employees with disabilities **[and Top Management level]**. 4.2 A Measured Entity must use the data in calculating its score under the Management Control scorecard used in its returns filed with the Department of Labour under the Employment Equity Act. This does not apply to Measured Entities exempt from filing such returns. **Measured Entity that does not distinguish between Top Management and Senior Management may include its Senior Management under this statement. If a Measured Entity adopts this approach -**	The exclusion of junior management is short sighted as it implies that the achievement of diversity at this level is not significant, whereas representation of black persons at this level represents the pool of talent that will feed more senior management levels. Junior management is the critical layer to feed into our business' leadership pipeline. Key retention programmes for business should be taken into consideration under junior management i.e. BEE shares
4.3.1 the corresponding targets for Senior Management in Code series 300 will apply to the Management Control scorecard;	Agree
4.3.2 Senior Management included in this statement are not measurable under statement 300.]	Agree
4.4 If a Measured Entity does not distinguish between **[Senior Top]** Top Management and **[Other Top]** Senior Management, then Top Management is measurable as a single indicator with a Weighting of _**5** points under paragraphs 2.2 and 2.3 **[2.2.1 and 2.2.2].**	
Paragraph 5 of Code 200, Statement 200 - Calculating the Adjusted Recognition for Gender	Agree
Paragraph 5 of Code 200, Statement 200 is hereby deleted	
[CALCULATING THE ADJUSTED RECOGNITION FOR GENDER The Adjusted Recognition for Gender is calculated in terms of the formula "A" in Annex 200(A)]	
PARAGRAPH 6 OF CODE 200, STATEMENT 200- CALCULATING COMPLIANCE	Agree
6.1 The criteria in the Management Control scorecard are measured in terms of formula **[B]** "A" set out in Annex **[3]** 200 (A).	

Annexe 200 (A) of Code 200, Statement 200 Calculating the Adjusted Recognition for Gender	Agree
The Adjusted Recognition for Gender formula of Code 200, Statement 200 is hereby amended by the deletion of the following:	The adjusted recognition for gender formula has been removed yet there is no recognition for black females under ‘middle management’ in the ‘measurement category & criteria” scorecard – perhaps an error?
A: CALCULATING THE ADJUSTED RECOGNITION FOR GENDER The calculation of the Adjusted Recognition for Gender is as follows:	Agree
$A = B/2 + C$	Agree
C is limited to a maximum of 50% of the target	
Where	
A is the Adjusted Recognition for Gender	
B is the percentage of employees in the measurement category that are black people	
C is the percentage of employees in the measurement category that are black women	

Annex 200 (B)- Calculating Compliance	Agree
CALCULATING COMPLIANCE	
The calculation of the management indicators provided for in paragraphs 2.1.1, 2.1.2., 2.2.1 and 2.2.2 is as follows:	
$\mathbf{A = B/C \times D}$	
C is limited to 50% of the target	
Where	
A is the score for measured management indicator	
B is the Adjusted Recognition for Gender calculated in paragraph 5	
C is the target for that measurement category as per paragraph 2	
D is the Weighting for measured indicator as per paragraph 2	

A = B/C x D	
C: The calculation of the management indicator provided for in paragraph 2.3 is as follows:	
Where	
A is the score for the management indicator in paragraph 2.3 of the number of black Independent Non- Executive Board Members of the Measured Entity as a percentage of the total number of Independent Non-Executive Board Members of the Measured Entity	
C is the target for Independent Non-Executive Board Members of the Measured Entity in paragraph	
D is the Weighting points in paragraph 2.3	

C: CALCULATING COMPLIANCE	
Introduction of Annexe 200 (C) of Code 200, Statement 200 - Calculating Compliance	BUSA disagrees with this formulation see above.It is our opinion that notwithstanding our objection to using the national demographic instead of just black the formula does not work as it should.We do not believe this formula works
The Calculating Compliance formula of Code 200, Statement 200 is hereby amended by the inclusion of the following	
The calculation of the Management Control indicators provided for in paragraphs 2.3 and 2.4 as follows:	
$\left\{ AM/C + CM/C + IM/C + AF/C + CF/C + IF/ \right\}$	Calculation formula is incorrect as it cannot add up to 100%. Submit the suggested / intended calculation plus an example

A = 6 X D	
For each indicator	
Where	
A is the score for each occupational level as measured in the Management Control Scorecard	
AM is the percentage of employees in the measurement category that are African Males	See our comments above
CM is the percentage of employees in the measurement category that are Coloured Males	See our comments above
IM is the percentage of employees in the measurement category that are Indian Males	See our comments above
AF is the percentage of employees in the measurement category that are African Females	See our comments above
CF is the percentage of employees in the measurement category that are Coloured Females	See our comments above
IF is the percentage of employees in the measurement category that are Indian Females	See our comments above
C is the target for that measurement sub-category as per paragraphs 2.1.1, 2.2.1, 2.3.1, 2.4.1, 2.5.1.	See our comments above
D is the overall target for all black people as per paragraphs 2.1.1, 2.2.1, 2.3.1, 2.4.1, 2.5.1. a	Disagree with the creation of a distinction of black people as this goes against the countries stated aim of job creation for black people in general, who by definition, where people that were affected by apartheid??????????

Substitution of the title of Code Series 400, Statement 400	

The title of Code Series 400, Statement 400 (hereinafter 'Code Series 300, Statement 300') is hereby substituted with the following title -	
"CODE SERIES [400] <u>300</u>: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Agreed
STATEMENT [400] <u>300</u>: MEASUREMENT OF THE SKILLS DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT"	Agreed
Paragraph 2 of Code Series 300, Statement 300 - The Skills Development Scorecard	
Code Series 300, Statement 300 is hereby amended by the substitution for paragraph 2 of the following paragraph -	Agreed
"2.1 The following table represents the criteria used for deriving a score for Skills Development under this statement:	Agreed

Measurement Category & Criteria	Weighting points	Compliance targets	Support the inclusion of unemployed black people, as this will encourage business to provide training opportunities for the unemployed, in addition to only the businesses immediate staffing needs. This however must be supported by the Basic Conditions of Employment Act, i.e. employers should not be forced to deem these unemployed people as employees.
2.1.1 Skills Development Expenditure on **[learning programmes]** <u>any program specified in the Learning Programme Matrix for black people as a percentage of Leviable Amount</u>			

2.1.1.1 Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees as a percentage of Leviable Amount **[using the Adjusted Recognition for Gender]**	8 **[6]**	**[3%]**6%	Increasing the target to 6% might work provided workplace learning is encouraged; RPL supported; FET colleagues are supported; SETA Mandatory grants are maintained at 40% and learnership allowances are brought back. . In respect of target changes the 2007 codes gave notice of increases in targets of procurement and employment equity. Enterprises have five years to prepare and budget for these increases. Midway through the 10 year plan for the codes, a new set of the targets without notice and enterprise operational considerations is a poor policy decision. It must be remembered that in most companies staff numbers are relatively stable which means the same employees need to be trained every year. This also presumes that there is an endless supply of vocational or job related training available. This target is made worse by the exclusion of learners salaries as allowable spend on B, C and D learning programmes. This is a major issue as a learner spends time learning on the job and therefore gets paid to do so, it is unfair then to not allow this spend as skills development. The removal of the adjusted recognition for gender in the skills development scorecard contradicts the focus on development and

			promotion of equality and development for females promoted by other acts, such as the EE legislation and Women Empowerment and Gender Equality Bill. • 2.1.1.1 states: :Skills development expenditure on learning programmes specified in the Learning Programme Matrix for Black employees……”.Where would the cost incurred for learnerships for unemployed Black learners be accounted for, if this category is for Black spend incurred for employees only? • The same comment above applies to 2.1.1.2:” Skills development expenditure on learning programmes specified in the learning programme matrix for Black employees with disabilities…….” The compliance target of 3% provides companies with a stretch but achievable target. Increasing this to 6% of SDL, especially with the removal of category F and G training and imposing a 40% threshold, is excessively punitive as no one company has the ability to double their training spend, and in effect their skills development budget in the timeframe

			proposed. **<u>Recommendations</u>**: Measure Black spend and Black disabled spend on females as a separate line with separate targets as in the proposed management control scorecard. This will give a fair measure to all companies, including those where the nature of their business is suited to the employment of males, or where female employees are scarce in the market, such as mechanics, construction, mining and the like. Increase the compliance target gradually over a period of time to monitor the feasibility of such a steep target. Example: increase by 0.5% up to 1 % per annum over a period of 5 years to monitor and track whether a target such as this is achievable at all.
2.1.1.2 Skills Development Expenditure on Learning Programmes specified in the Learning Programme Matrix for black employees with disabilities as a percentage of Leviable Amount **[using the Adjusted Recognition for Gender]**	<u>4</u> **[3]**	0.3%	Agree
2.1.2 Learnerships, Apprenticeships, and Internships:			With the SETA's focusing on the PIVOTAL grants and on FETs this would pose a

			challenge on business where there is not a strong focus on learnerships going forward (at the lower levels).
2.1.2.1 Number of black **[employees**] people participating in Learnerships **[or Category B, C and D Programmes]**, Apprenticeships, or Internships as a percentage of total employees **[using the Adjusted Recognition for Gender]**	4 **[6]**	2.5% **[5]**	Agree
2.1.2.2 Number of unemployed black people 2.5% participating in Learnerships, Apprenticeships, and Internships as a percentage of total employees	4	2.5%	Wording in 2.1.2: Number of Black people... Are the people limited to employees of the measured entity? Clarification needed on definition of "people" and the criteria for inclusion / exclusion as unemployed Black people are already counted in 2.1.2.2. The ambiguous wording may lead to double counting of learners, e.g., where company A sends employees to company B for a learnerships or apprenticeship and company B incurs the cost of the programme. Both companies A and B can count the learners in this category: company A because the learners are in their employment and company B, as the learnership provider, will count the learners as well as skills development cost incurred. • The split of Learnerships. Apprenticeships and Internships between unemployed Black learners and other "people", assuming employees, recognises the need to focus sustainable

			development on employees as well as the unemployed. Removal of category B,C and D programmes and replacing with the wording "Learnerships, internships and apprenticeships" is limiting and excludes other programmes in the programme matrix that could be included. The use of the term "Learnerships" is confusing – refer to comment regarding the skills matrix below, specifically category C programmes which are not learnerships, but refer to licencee programmes or programmes required for registration. **Recommendations:** Clarify the term Black "people" and make guidelines available as to what criteria will be used to determine whether a person can be counted or not.
Bonus points:			
2.1. 3 Number of black people absorbed by the Measured and industry Entity at the end of the Learnerships programme	5	100%	It is not a feasible option to have an indicator measuring compliance against that which the measured entity has no control over. Specifically this means that the entity under measurement cannot be held responsible to ensure that a learner remains in their employ, after being given the

			opportunity to do so. Neither can the measured entity be held responsible for any learners' decision to change career paths and such. The Department should clarify how long learners should be retained for and if whether the absorption should be in line with what they were trained on.

2.2 The compliance targets for the Skills Development scorecard are based on the overall demographic representation of black people as defined. These targets should be further broken down into specific criteria according to the different race sub groups within the definition of black people in accordance with the Employment Equity Act requirements on equitable representation.	Clarity is required relating to "overall demographic representation of black people as defined" – in the amendments all reference to EAP has been deleted, except for the definition of EAP in the definitions. The compliance targets should clearly stipulate that they are based on the EAP and not the 'overall demographic representation', which includes unemployable people and foreign nationals. The reference to demographic representation for skills development is questionable, as training is based on training needs, which stems from the business strategy and not based on demographics. If black representation at management control level is correct this will flow through to the skills development scorecard, however it can't be

	forced through the skills development scorecard – this will result in a double penalty. Will the national or regional EAP representation statistics apply? This will have a significant impact on organisations that have national footprint with head office operations based in KZN or Western Cape, should national EAP statistics apply. This is not aligned with the EEA which looks at both national and regional EAP.
<u>2.3</u> The Weighting points in the Skills Development scorecard represent the maximum number of points possible for each of the criteria.	
<u>2.4 Threshold requirements</u>	
<u>2.4.1 A Measured Entity must achieve a minimum of 40% of the target set out in the skills development scorecard in order to avoid discounting of its overall scorecard</u>	We do not support these penalties and believe they will have the opposite effect. Same principles applies –this should be measured in the management control element and not again in the skills development scorecard as it will result in a double penalty, i.e. same issue is being measure twice, accruing either double points or double penalties. 2.4.1 – Is it 40% per category or 40% of overall? Should read “targets” in plural.

	<u>Recommendations</u> Make the minimum threshold 40% of points i.e. 8 points
<u>2.4.2 Non-compliance with the threshold targets will result in the achieved BEE status level being discounted in accordance with paragraph 3.4 in statement 000."</u>	See above this amounts to a unfair double penalty
Paragraph 3 of Code Series 300, Statement 300 - Key Measurement Principles	
Paragraph 3 of Code Series 300, Statement 300 is hereby amended by: (a) The substitution for paragraph 3.1 of the following paragraph -	
"3.1 Measured Entities receive points on the Skills Development scorecard only if:	Agreed
3.1.1 **[they are in compliance with the requirements of the Skills Development Act and the Skills Development Levies Act]** <u>they have developed the following SETA approved documents: Workplace Skills Plan, an annual training report and pivotal report; and</u>	BUSA can only be in a position to comment on this once the SETA Grant Regulations are finalized. Since the Pivotal Report is only said to be developed by 2014, and there is no transitional period allowed for, it would be impossible for business to achieve this, resulting in unfairly being penalized.
3.1.2 **[they have registered with the applicable SETA]** <u>they have implemented programmes targeted at developing Priority Skills generally, and specifically, for black people.</u>	Agreed
3.1.3 they have developed a Workplace Skills Plan; and	
3.1.4 they have implemented programmes targeted at developing Priority Skills generally, and specifically, for black employees]".	

(b) The deletion of paragraphs 3.3, 3.5 and 3.7.	BUSA supports the retaining of ABET. The removal of ABET Multiplier seems to imply

	that either ABET training is no longer a national priority or that there is a belief that ABET Training is being abused by companies to increase their score. First, ABET training should continue to be given priority otherwise this will be a disincentive to enterprises. Also, socially this training contributes to the national upliftment and has a far reaching effect in the confidence gained by trainees in being able to be literate. Finally, this opens these employees up to training that previously they would not be eligible for due to their backgrounds. Removal of Category F and G training - Disagree. Removing internal training as qualifying skills spend is shortsighted and harsh on enterprises that create skills internally. It is incorrect to equate successful training or skills transfer purely by the amount of money paid to an external provider. This is further problematic because it assumes that there are no capable employees or proprietary knowledge from which to learn internally. Over and above Cat G, Cat F also needs to remain as most skills transfer takes place between peers in an enterprise and after this in the most effective way of upskilling. Cat F effectively removes this critical learning resource. Removal of Learnership Salaries is not consistent with the overall ethos of a

	learnership, which, by definition, is not a job, but a period of training. The fact that the person receives a salary during this period of learning must surely count as Skills development expenditure as this payment is for the time of the employee being trained. Time not 100% dedicated to the job of the employee must surely be recognized as Skills Expenditure cost. BUSA proposes a bonus point for training white employees African languages, this will support transformation and social cohesion.
(c) The renumbering of paragraphs 3.4 and 3.6 as paragraphs 3.3 and 3.4.	Agreed
(d) The insertion after renumbered paragraph 3.4 of the following paragraph -	
<u>3.5 General Principles</u>	
<u>3.5.1 Contribute to the achievement of the country's economic growth and social development goals by developing skills that will enrich the creation of decent work and sustainable livelihoods</u>	Forcing business to only run accredited training programmes is not going to achieve this as it is cumbersome, expensive and time consuming. This is based on a very old, static training model and does not suit dynamic/fast changing businesses. <u>decent work and productive livelihoods/ Enterprises</u>
<u>3.5.2 Promote the development of an industrial skills base in critical sectors of production and value-added manufacturing, which are largely labour-intensive industries</u>	This cannot be confined purely to industrial skills. Services sectors, as consumers and the largest contributors to GDP and employment must be include.

3.5.3 Support 'Professional, Vocational, Technical and Academic Learning' programmes, achieved by means of professional placements, work integrated learning, apprenticeships, learnerships and internships, that meet the critical needs for economic growth and social development.	Support 'Professional, Vocational, Technical and Academic Learning' programmes, achieved for example by means of professional placements, work integrated learning, apprenticeships, learnerships and internships, that meet the critical needs for economic growth and social development.
3.5.4 Strengthen the skills and human resource base by encouraging the support of skills development initiatives with an emphasis on skills development and career pathing for all working people in order to support employment creation."	These insertions do not support the indicators and the measures of those indicators
Deletion of paragraph 4 of Code Series 300, Statement 300	Agreed
Code Series 300, Statement 300 is hereby amended by the deletion of paragraph 4.	
Deletion of paragraph 6 of Code Series 300, Statement 300	Disagree, see above regarding Cat F and G
Code Series 300, Statement 300 is hereby amended by the deletion of paragraph 6.	
Substitution of Annexe 400A of Code Series 300, Statement 300	
Code Series 300, Statement 300 is hereby amended by the substitution for Annexe 400A and 400B of the following Annexe -	Agreed

Cat	Programme	Narrative Description	Delivery mode	Learning Site	Learning Achievement	
A	Bursaries	Institution-based theoretical instruction alone - formally assessed by the institution instruction such as universities	Institutional instruction	Institutions such as universities and colleges, schools, ABET providers	Recognized theoretical knowledge resulting in the achievement of a degree, diploma or	Agree, however programme name “bursaries” is misleading as bursaries may be offered at a company’s discretion and is not limited to degrees, diplomas and certificates as

					certificate issued by an accredited or registered formal institution of learning	per the learning achievements described. Depends on the beneficiary whether it falls under skills or CSI. ABET is mentioned under the column heading “learning site”. ABET is not a learning site, but refers to an NQF level 1 qualification which can be category A or E. It appears that the definitions of “internships” and learnerships” might have been inadvertently swapped.
B	Internships	Institution-based theoretical as well as some practical learning with an employer or in a simulated work environment - formally assessed through the institution	Mixed mode delivery with institutional institution as well as supervised learning in an appropriate workplace or simulated	Institutions such as universities and colleges, schools, ABET providers	Theoretical knowledge and work place experience with set requirements resulting in the achievements of a degree, diploma or	Agree

			work environment		certificate issued by an accredited or registered formal institution of learning	

Cat	Programme	Narrative Description	Delivery mode	Learning Site	Learning Achievement	
C	Learnerships	Recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification - formally assessed by a statutory occupational or professional body	Structured learning in the workplace with mentoring or coaching	Workplace	Occupational or professional knowledge and experience formally recognised through registration or licensing	Agree
D	Learnerships or Apprenticeships	Occupationally- directed instructional and work-based learning programme that requires a formal contract - formally assessed by an accredited body	Institutional instruction together with structured, supervised experiential learning in the workplace	Institution and workplace	Theoretical knowledge and workplace learning,resulting in the achievement of a South African Qualifications	Agree

					Authority registered qualification, a certificate or other similar occupational or professional qualification issued by an accredited or registered formal institution of learning	

Cat	Programme	Narrative Description	Delivery mode	Learning Site	Learning Achievement	
E	Work-integrated learning	Occupationally - directed instructional and work-based learning programme that does not require a formal contract - formally assessed by an accredited body	Structured, supervised experiential learning in the workplace which may include some institutional instruction	Workplace, institutional as well as ABET providers	Credits awarded for registered unit standards, continued professional development, improved performance or skills (e.g. evidence of outputs based on Performance	Agree, however, any informal training (which forms a great part of some organisations' learning models, e.g. learning through social platforms, team projects and collaboration/co-creation) – world best practice – will be excluded if it is not accredited. Training programmes change regularly and this would be

					Development Programme)	a huge disincentive for business in terms of aligning training to BBBEE requirements.
[F]		**[Occupationally - directed informal instructional programmes]**	**[Structured information sharing or direct instruction involving workshops, seminars and conferences and short courses]**	**[Institutions, conferences and meetings]**	**[Continuing professional development, attendance certificates and credits against registered unit standards (in some instances)]**	Disagree The removal of category F and G programmes completely disregards the impact and role of informal instruction and workplace-based learning and experience that allows an individual to advance and progress within their career. It assumes that only certified formal instruction is aimed at the development of an individual. By implication, any candidates with a specific qualification can perform a job requiring that specific qualification regardless of whether they have the relevant

						experience and industry knowledge. **<u>Recommendations</u>** Introduce a limit similar to that introduced for category G learning previously to acknowledge the role of information and workplace instruction in career development
[G]		**[Work-based informal programmes]**	**[Informal Training]**	**[Workplace]**	**[Increased understand of job or work context or improved performance or skills]"**	Disagree

Amendment of Annexe 400B	
Annexe 400B of Code Series 300, Statement 300 is hereby renamed Annexe 300B, and is hereby further amended by:	Agreed
(a) The deletion of Part A and the insertion of the following part -	Agreed
"A: Calculating Compliance The calculation of the Skills Development indicators provided for in paragraph 2.1.1 and 2.1.2 as follows:	Disagree. See our comments above, under MC
<u>AM/C + CM/C + IM/C + AF/C + CF/C + IF/C</u>	

A = 6 X D	
For each indicator	
Where	
A is the score for any given criteria referred to in the scorecard under statement 300.	
AM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are African Males	Disagree
CM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Coloured Males	Disagree
IM is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Indian Males	Disagree
AF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are African Females	Disagree
CF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Coloured Females	Disagree
IF is the percentage of spend (criteria 2.1.1.1) or people (criteria 2.1.2.1) in the measurement category that are Indian Females	Disagree
C is the target for the applicable criteria as referred to in the scorecard under statement 300.	
D is the Weighting for the applicable criteria as referred in the scorecard under statement 300."	

(b) The substitution for Part B of the following part -	
B: Measurement of Criteria 1.1.2 of the Skills Development Indicators	
This formula explains the method of measurement of the criteria in the Skills Development scorecard:	
A =B/C X D	
Where	

A is the score for the given criteria as referred to in paragraph 2.1.1.2 of the scorecard under statement **[400]** 300	Agreed
B is the **[Adjusted Recognition for Gender calculated under the calculation of the adjusted recognition for gender]** percentage of spend in the measurement category that are black disabled people	Agreed
C is the target for the applicable criteria as referred to in the scorecard under statement **[400]** 300	Agreed
D is the Weighting for the applicable criteria as referred in the scorecard under statement **[400]** 300"	Agreed
(c) The insertion after Part B of the following part - "C: Measurement of Criteria 1.2.3 for the absorption of learners	Agreed with calculation, however express concern that there is no real way of actually measuring this
E	
A = L + A + 1 / C X D	
For each indicator	
Where	
A is the score for the absorption criteria referred to in the scorecard under statement 300.	
E is the number of section 18.2 learners employed post training and section 18.2 apprentices, and interns currently contracted in a training programme of 3 to 4 years	
L is representative of the learnership programme	
A is representative of the apprenticeship programme	
I is representative of the internship programme	
C is the target for the absorption criteria as referred to in the scorecard under statement 300	
D is the Weighting for the applicable criteria as referred in the scorecard under statement 300."	
Substitution of title of Code Series 500, Statement 500	

Code Series 500, Statement 500 (hereinafter 'Code Series 400, Statement 400') is hereby amended by the substitution for the title of the following title -	Agreed
"CODE SERIES [500] 400: MEASUREMENT OF THE [PREFERENTIAL PROCUREMENT] <u>ENTERPRISE AND SUPPLIER DEVELOPMENT</u> ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Agreed
STATEMENT [500] 400: THE GENERAL PRINCIPLES FOR MEASURING [PREFERENTIAL PROCUREMENT] <u>ENTERPRISE AND SUPPLIER DEVELOPMENT</u>	Agreed
Paragraph 1 of Code Series 400, Statement 400 - Objectives of this Statement	
Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 1 of the following paragraph -	
"The objectives of this statement are to specify:	
1.1 [the Preferential Procurement scorecard] <u>the Enterprise and Supplier Development focus areas, namely:</u>	Agree in principle, but disagree with certain matters – see comment elsewhere All sub-indicators of the preferential procurement section of this scorecard only recognize Value Adding Supplier (VAS). And the definition of a VAS remains the same. This is extremely problematic as there is a significant proportion (could be as much as 80% according to some of the verification agencies) of companies that are not VAS. The definition of VAS does not make sense as there are very large manufacturing companies who are clearly "value adding" but who are not VAS according to the Codes definition. The unintended consequence of this is that for a company that is not a VAS there is absolutely no incentive to achieve B-BBEE compliance as their clients will not recognize their B-BBEE certificates.

	Recommendations Either: 1. remove the limitation to value adding suppliers, or amend the definition of value adding suppliers so that it addresses the real problem.
<u>1.1.1 Preferential Procurement; and</u>	As above
<u>1.1.2 Enterprise and Supplier Development;</u>	As Above
<u>1.2 the scorecard for measuring Enterprise and Supplier Development;</u>	As Above
1.3 the key measurement principles applicable to calculating Preferential Procurement contributions to B-BBEE **[;]** <u>and Qualifying Enterprise Development Contributions</u>	As above
1.4 principles applicable when calculating B-BBEE Procurement Spend [;] and Enterprise Development Spend; and	As above
1.5 the formula for calculating the individual criteria specified in the [Preferential Procurement] Enterprise and Supplier Development scorecard."	As above

Paragraph 2 of Code Series 400, Statement 400 - Preferential Procurement Scorecard	As above
Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 2 of the following paragraph -	As above
"2 [Preferential Procurement] <u>Enterprise and Supplier Development</u> Scorecard	
The following table represents the criteria for deriving a score for **[Preferential Procurement]** <u>Enterprise and Supplier Development</u> under this Statement:	

Criteria	Weighting points	Compliance target	

		s	
<u>2.1 PREFERENTIAL PROCUREMENT</u>			
2.1.1 B-BBEE Procurement Spend from all <u>Value- Adding Suppliers</u> based on the B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	**[12]** <u>8</u>	**[70%]** <u>80%</u>	The increase in these targets is counter productive and serves to create much apathy especially in light of the fact that these targets have been recently increased. The target of 80% is unachievable if imports are included in the total measured procurement spend – the target % needs to be reduced to 70% or less The targets for black owned and black women suppliers has increased too much, not sustainable in short time due to supply & demand, adopt a phased in approach.
2.1.2 B-BBEE Procurement Spend from <u>Value-Adding</u> Qualifying Small Enterprises or Exempted Micro- Enterprises based on the applicable B-BBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	**[3]** <u>4</u>	**[20%]** <u>30%</u>	Further to above, the prequalifying criterion of being Value Adding removes the effective driver of BBBEE. There is now only a yes/no situation with regard to acceptability of the certificate. Given this, if a supplier, quite easily determines that he is not value adding, and has no ability to become such in the short or even medium term, he would not bother with doing the certification as it would not be worth the paper it is written on. To become value adding is not something you could strategise to do in the majority of enterprises. The traditionally value adding companies are the labour intensive companies such as

			consultants and other such companies that sell employees time. The other typically value adding suppliers are those that have a high margin with extremely low overheads and support costs. These are typically manufacturing companies in a highly technological driven manufacturing process that provides low cost resulting in high profit. Either way these types of enterprises are in short supply, roughly 30% of all enterprises are value adding. These 30% also are by their nature, suppliers of support service and products. This means that actual operational expenditure and cost of sales of most enterprises will be non-compliant even if purchased from black owned enterprises. Lets remember, Value adding status qualification offers the same challenge for a black or white enterprise! This challenge is also increased a dramatically for a small micro enterprises. The administrative burden on that enterprise may be so much that it forces the enterprise to close down and creating further unemployment. To effectively drive procurement you need to incentivize enterprise to keep achieving. This means that you got to create tiers of achievement. When you have a barrier to entry up front that makes this all a non starter. A enterprise that is not value adding would not bother with attempting to support skills

			development, or Enterprise/Socio economic development at the detriment to any and all beneficiaries of those elements. Further, this in all likelihood could force many enterprises to shut down, black and white alike, which cannot become value adding due to the nature of enterprise. Many examples spring to mind…Motor Manufacture is one … Turnover is extremely high yet Profit is low. The reality of globally competitive manufacture means automated manufacture with low labour costs. This immediately means these companies are not Value adding, and therefore will not be compliant. If no compliance, they will automatically stop doing all related BEE initiatives to the detriment of the entire country.
2.1.2.1 B-BBEE Procurement Spend from Value-Adding Suppliers that are >50% black owned; and	**[3]** 9	**[12%]** 40%	Same as above it is unfair to move the targets again
2.1.2.2 B-BBEE Procurement Spend from Value-Adding Suppliers that are >30% black women owned.	**[2]** 4	**[8%]** 12%	Same as above
2.2 ENTERPRISE AND SUPPLIER DEVELOPMENT			
2.2.1 Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target.	10	2% NPAT	Surely any qualifying supplier development candidate meets the criteria of Enterprise Development, because, a supplier is still an enterprise. Does this mean then that the target below is automatically achieved if this target is at 50% compliance? Require a clear definition of what an

			enterprise development supplier is and what a supplier development supplier is Perhaps value chain development should be looked at , rather than supply chain – primary supplier & secondary supplier development Also, methodology should be introduced to measure local content in the supply chain We understand that you can combine the enterprise development contribution with the supplier enterprise contribution, making the calculation as follows: • NPAT: 3% • Number of points: 15 • Target: 40% of 15: 6 points This needs to be confirmed / clarified
<u>2.2.2 Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.</u>	**[15]** <u>5</u>	1% of NPAT	Retain accumulative contributions and / or adopt a phase out approach – annual contributions are short-sighted, creates uncertain planning for both the beneficiary and the measured entity
<u>**2.3 Bonus points for the following (during measured period)**</u>			
<u>2.3.1 New venture created (to become a value adding supplier)</u>	1		Please explain what is meant by the statement in brackets? And how will this be measured. Require clarity on the definition of “new venture creation to become a value added supplier, graduation from ED to SD & jobs

			created by 2.2.1 & 2.2.2”; Require the calculation methodology for the measurement of the above 3 scenarios and the 3 bonus points
2.3.2 Graduation from Enterprise Development to supplier development beneficiary	1		See comment above, but agreed
2.3.3 Jobs created by supported supplier from Enterprise Development to Supplier Development (a multiplier of 1.25)	1		How is this measured/qualifying criterion? If a white person gets the job, will it still count?

2.4 Enterprise and Supplier Development Contributions will be recognised as a percentage of annual Net Profit After Tax (NPAT)	
2.5 Threshold Requirements	
2.5.1 A Measured Entity must achieve a minimum of 40% of the targets set out on 2.1.1, 2.2.1 and 2.2.2 of the Enterprise and Supplier Development Scorecard in order to avoid discounting of its overall scorecard	This discounting is again, too punitive. A balanced scorecard approach should be adopted.
2.5.2 Non-compliance with the sub-minimum targets will result in the achieved BEE status level being discounted in accordance with paragraph 3.4 in statement 000."	Surely any qualifying supplier development candidate meets the criteria of Enterprise Development, because, a supplier is still an enterprise. Does this mean then that the target below is automatically achieved if this target is at 50% compliance
	See above
Paragraph 3 of Code Series 400, Statement 400 - Key Measurement Principles	
4. Paragraph 3 of Code Series 400, Statement 400 is hereby amended by:	Please explain what is meant by the statement in brackets? And how will this be measured
(a) The substitution for paragraph 3.1 of the following paragraph -	See comment above, but agreed

"3.1 The weighting points in the **[Preferential Procurement]** Enterprise and Supplier Development scorecard represent the maximum number of points possible for each of the criteria."	How is this measured/qualifying criteria.
(b) The substitution for paragraphs 3.3 and 3.4 of the following paragraphs -	Agreed in principle
3.3 If a Measured Entity procures goods and services from a Supplier that is:	
3.3.1 a recipient of enterprise development contributions from the Measured Entity under Code series **[5]**400, and/or a black QSE or EME that has a minimum 3 year contract with the Measured Entity, the recognisable BBBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.2; and	Agreed
3.3.2 A **[Value Adding Enterprise]** New Enterprise, the recognisable B-BBEE Procurement Spend that can be attributed to that Supplier is multiplied by a factor of 1.25.	How is this determined…What is proof of a New Enterprise
3.4 This statement applies to all areas of procurement **[.]** enterprise and supplier development."	Agreed
(c) The insertion after paragraph 3.4 of the following paragraph -	

3.5 General Principles	This provision is excessively punitive and again may have the reverse effect of companies abandoning their ED programmes as the scorecard benefit will be negated if they don't reach any one of the minimum thresholds. It is also more complicated to measure which creates a further deterrent.
3.5.1 To strengthen local procurement in order to help build South Africa's industrial base in critical sectors of production and value adding manufacturing, which are largely labour-intensive industries.	

3.5.2 To increase local procurement through capacity building achieved by incentivising appropriate local supplier development programmes by businesses supplying imported goods and services.	The indicators in this element do not seek to or promote the achievement of this
3.5.3 To actively support procurement from black owned QSEs and EMEs by identifying opportunities to increase procurement from local suppliers in order to support employment creation.	These goals are excellent and need to be given prominence in this type of manner, however, to consider the fact that companies may purchase 30% of all procurement from such enterprises clearly does not account for the majority of enterprise in SA who procure a large portion of their goods and services from a handful of suppliers due to the nature of their service. Even if the enterprise were to setup a supplier as part of its ESD, the supplier would be considered a front enterprise in terms of the proposed Amended BBBEE Act. Further to that, most of these companies' turnovers will immediately be above the limit of the QSE threshold, making this an impossible target to achieve. If the measured entity were to split its purchase up between smaller enterprises to take advantage of their QSE status, this would be fronting. These kinds of targets create such environments.
3.5.4 To support procurement from black owned and black women owned businesses in order to increase the participation of these businesses in the main stream economy.	Careful consideration needs to be given to the qualifying criteria of these indicators in comparison to the desired goals when viewed in light of the spend characteristics of the targeted sector of the economy. In this instance targeted sector are generics
3.5.5 To promote the use of black owned professional service providers and entrepreneurs as suppliers.	Agreed – does not explain why the paragraph related to this type of supplier has been

	removed?
3.5.6 Measured Entities receive recognition for any Enterprise and Supplier Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.	Agreed
3.5.7 Measured Entities are encouraged to align their Enterprise and Supplier Development initiatives with the designated sectors of government's localisation and valued adding programmes.	Agreed in so far that these programmes must be readily available and must have gone through their own process of public consultations etc.
3.5.8 Measured Entities are encouraged to align their enterprise and supplier development initiatives with their supply chain requirements thereby linking Enterprise and Supplier Development with preferential procurement.	Agreed
3.5.9 Qualifying Enterprise and Supplier Development Contributions of any Measured Entity are recognisable on an annual basis.	Agreed, however, Clarification required. Does this consider outstanding loan amounts until it paid off?
3.5.10 No portion of the value of any Qualifying Enterprise and Supplier Development Contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement.	Agreed

3.5.11 Measured Entities receive points on the Enterprise and Supplier Development scorecard only if they have fulfilled the requirement to demonstrate that they have developed an Enterprise and Supplier Development plan for Qualifying Beneficiaries. This plan should include:	Agreed, however, Guidelines are required regarding these expectations.
3.5.11.1 Clear objectives;	
3.5.11.2 Priority interventions;	
3.5.11.3 Key performance indicators; and	
3.5.11.4 A concise implementation plan with clearly articulated milestones."	

Deletion of paragraph 4 of Code Series 400, Statement 400 - Black Owned Professional Service Providers and Entrepreneurs	
Code series 400, Statement 400 is hereby amended by the deletion of paragraph 4.	See comment above in this regard, this is contrary to stated objective
Paragraph 5 of Code Series 400, Statement 400 - Total Measurement Procurement Spend	
Paragraph 5 of Code Series 400, Statement 400 is hereby amended by:	
(a) The substitution for paragraph 5.4 of the following paragraph -	
5.4 Public Sector Procurement:	
<u>5.4.1</u> All goods and services procured from organs of state and public entities **[listed in Schedules 2 and 3 to the Public Finance Management Act**]. <u>Despite this, procurement by a Measured Entity from a local government authority, which is a reseller of that service, is measurable at the B-BBEE Recognition Level of the primary Supplier of the service;</u>	Regarding the insertion, how is this supposed to be monitored and measured? Will Local Government invoices reflect third party procurement?
<u>5.4.2 in any event, any procurement of any goods or services from any organ of state or public entity that enjoys a statutory or regulated monopoly in the supply of such goods or services, is excluded;"</u>	Some organs of state or public entities that enjoy a statutory or regulated monopoly are not a value-added supplier (e.g. SAPO) and therefore will be excluded automatically from a measured entity's BBBEE spend. DTI must allow for this type of scenario and allow for this spend to be excluded from a measured entity's total measured procurement spend
(b) The substitution for paragraph 5.10 of the following paragraph -	
"5.10 *Empowerment related expenditure*: all goods and services procured in carrying out B-BBEE. The Total Measured Procurement Spend does not include the actual contribution portion recognised under Code series <u>500 or</u> 600 **[or 700]** but does include any expenditure incurred in facilitating those contributions;"	Agreed
(c) The substitution for paragraph 5.12 of the following paragraph -	

"5.12 *Infra-group procurement*: **[except as provided in statement 002]** all goods and services procured from subsidiaries or holding companies of the Measured Entity. [<u>BEE credentials of the entity supplying goods and/or services must be confirmed by way of a valid BEE certificate]</u>."	How will this be possible when performing a consolidated scorecard for a group. GAAP and IFRS dictate, on consolidation that intra group expenditure be netted off and therefore has no effect on the financial position. The code also allows a group to hold one certificate for all companies consolidated into it, therefore if this change occurs, it would force subsidiaries to perform their own certificates just to satisfy this rule if they wanted to perform a consolidation. This creates, in most cases, a vast amount of unnecessary expenditure. Ultimately, a BBBEE certificate should be to represent the enterprise to the outside world and not internally. (JG)
Paragraph 6 of Code Series 400, Statement 400 - Exclusions from Total Measured Procurement Spend	
Paragraph 6 of Code Series 400, Statement 400 is hereby amended by:	
(a) The substitution for the heading of the following heading -	
6 Exclusions from Total Measured Procurement Spend	
The following list **[is the only]** <u>provides</u> peJGssible exclusions from Total Measurement Procurement Spend recognisable in terms of paragraph 5:"	
(b) The deletion of paragraph 6.2.	BUSA does not support the deletion of paragraph 6.2 Given the nature of this spend and the fact that these are the only entities that BBBEE certification is mandatory for, removing this seems plausible…However, when many of these entities don't have certificates or have certificates that are non-compliant, possibly as

	a result of this revision, it makes the non-discretionary spend with these entities non-compliant and leaves the customer with absolutely no alternative to use. The key underlining factor in what drove BBBEE transformation recently was the PP element and the fact that customers forced suppliers to transform by "talking with their feet" . The nature of this spend precludes this as an option and therefore makes the removal of the exclusion unjust
(c) The substitution for paragraph 6.5.2 of the following paragraph -	
"6.5.2 Investments, loans or donations qualifying for recognition under any statement under Code series **[600 or 700]** 400 or 500".	
(d) The deletion of paragraph 6.6.	Removal of the exclusion of imports clearly creates an environment which is not conducive to foreign investment or manufacturing in this country. It goes directly against the stated objectives of growing the economy and creating jobs. The majority of imports are imported not because there are local alternatives not used but because the imports are not locally available due to the fact that these goods and services originate from other countries. It must be understood that we cannot force the global economy to change the manner in which they operate…We cannot make them operate in RSA if there is no need to do so. If the goods or service required in any process or manufacturing environment is not locally available and can never be locally

	available, than that process or manufacture will not happen leading to a shrinking of the economy. Legislation that restricts the best input to the process or manufacture will create an inferior product or service and ultimately lead to failure of that economic activity. It is difficult to comprehend any means or manner in which this amendment could make sense.
Paragraph 7 of Code Series 400, Statement 400 - Measurement of B-BBEE Procurement Spend	
8. Paragraph 7 of Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 7.2 of the following paragraph -	
"7.2 B-BBEE Procurement Spend can be measured in terms of formula "A" in Annexe **[500(A)]** <u>400(A)</u>."	Agreed
Paragraph 8 of Code Series 400, Statement 400 - The Calculation of Preferential Procurement Contributions to B-BBEE	
9. Paragraph 8 of Code Series 400, Statement 400 is hereby amended by the substitution for paragraph 8.2 of the following paragraph -	
"8.2 The Measured Entity's score for Preferential Procurement contributions to B-BBEE under the preferential procurement scorecard can be calculated in terms of formula "B" in Annexe **[500(A)]** <u>400(A)</u>."	As stated, the unintended consequence of imposing significantly more difficult rules for obtaining scorecard points, together with drastically adjusting the number of points needed to reach the recognition levels, will result in some companies becoming discouraged from continuing their empowerment programmes or, in the worst cases, closing their businesses. B-BBEE should be about stimulating small business, especially, to jump start the economy and create jobs. <u>Recommendations:</u>

	Procurement recognition should stay the same.
Insertion of paragraphs 9, 10 and 11 into Code Series 400, Statement 400	
Code Series 400, Statement 400 is hereby amended by the insertion after paragraph 8 of the following paragraphs:	
9 ENTERPRISE AND SUPPLIER DEVELEOPMENT CONTRIBUTIONS	The measurement methodologies need to be clearly confirmed
9.1 The following is a non-exhaustive list of Recoverable Enterprise and Supplier Development Contributions:	Agreed
9.1.1 investments in beneficiary entities;	Agreed
9.1.2 loans made to beneficiary entities;	Agreed
9.1.3 guarantees given or security provided on behalf of beneficiaries;	Agreed
9.1.4 credit facilities made available to beneficiary entities;	Agreed
9.1.5 The following is a non-exhaustive list of Non-recoverable Enterprise and Supplier Development Contributions:	Agreed
9.1.6 grant Contributions to beneficiary entities;	Agreed
9.1.7 direct costs incurred by a Measured Entity in assisting and hastening development of beneficiary entities;	Agreed
9.1.8 overhead costs of a Measured Entity directly attributable to Enterprise and Supplier Development Contributions;	Agreed
9.1.9 preferential credit terms granted by a Measured Entity to beneficiary entities;	Agreed
9.1.10 preferential terms granted by a Measured Entity in respect of its supply of goods or services to beneficiary entities;	Agreed
9.1.11 contributions made to settling service costs relating to the operational or financial capacity or efficiency levels of beneficiary entities;	Agreed
9.1.12 payments made by the Measured Entity to suitably qualified and experienced third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf;	Agreed

9.1.13 discounts given to beneficiary entities in relation to the acquisition and maintenance costs associated with the grant to those beneficiary entities of franchise, licence, agency, distribution or other similar business rights;	Agreed
9.1.14 the creation or development of capacity and expertise for beneficiary entities needed to manufacture or produce goods or services previously not manufactured, produced or provided in the Republic of South Africa is provided for in Government's economic growth and local supplier development policies and initiatives;	Agreed
9.1.15 facilitating access to credit for beneficiary entities without access to similar credit facilities through traditional means owing to a lack of credit history, high-risk or lack of collateral;	Agreed
9.1.16 provision of training or mentoring by suitably qualified entities or individuals to beneficiary entities which will assist the beneficiary entities to increase their operational or financial capacity; and	Agreed
9.1.17 the maintenance by the Measured Entity of an Enterprise and Supplier Development unit which focuses exclusively on support of beneficiary entities or candidate beneficiary entities.	Agreed
9.1.18 New projects promoting beneficiation by the Measured Entity for the benefit of Enterprise and Supplier Development Beneficiaries.	Agreed
9.1.19 Provision of preferential credit facilities to a beneficiary entity by a Measured Entity may constitute an Enterprise and Supplier Development Contribution. Examples of such contributions include without limitation:	Agreed
9.1.20 provision of finance to beneficiary entities at lower than commercial rates of interest;	Agreed
9.1.21 relaxed security requirements or absence of security requirements for beneficiary entities unable to provide security for loans; and	Agreed
9.1.22 settlement of accounts with beneficiary entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided the shorter period is no longer than 15 days;	Agreed

9.1.23 providing training or mentoring to beneficiary communities by a Measured Entity. (Such contributions are measurable by quantifying the cost of time (excluding travel or commuting time) spent by staff or management of the Measured Entity in carrying out such initiatives. A clear justification, commensurate with the seniority and expertise of the trainer or mentor, must support any claim for time costs incurred).	Agreed
9.1.24 Maintaining an Enterprise and Supplier Development unit by the Measured Entity. (Only that portion of salaries and wages attributable to time spent by the staff in, and the other expenses related to, promoting or implementing Enterprise and Supplier Development constitute contributions.)	Agreed
9.1.25 Payments made by the Measured Entity to suitably qualified and experienced third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf.	
Insertion of paragraph 10 under Code 400, Statement 400 - Monetary and Non-monetary Contributions	
10 MONETARY AND NON-MONETARY CONTRIBUTIONS	
10.1 Subject always to the definition of Qualifying Enterprise and Supplier Development Contributions, the following monetary/non-monetary contributions will, without limitation, be considered:	Agreed
10.1.1 the provision of seed or development capital;	Agreed
10.1.2 contributions made towards the settlement of the cost of services relating to the operational or financial capacity and/or efficiency levels of a Qualifying Enterprise and Supplier Development Beneficiary including, without limitation:	Agreed
10.1.2.1 professional and consulting services;	Agreed
10.1.2.2 licensing and/or registration fees;	Agreed
10.1.2.3 industry specific levies and/or other such fees; and	Agreed
10.1.2.4 IT services;	Agreed
10.1.3 payments made by the Measured Entity to third parties to perform Enterprise and Supplier Development on the Measured Entity's behalf;	Agreed

10.1.4 subject to paragraph 4.2, creation or development of capacity and expertise for Beneficiary Entities required to manufacture or produce goods and/or services previously not manufactured, produced or provided in the Republic of South Africa;	Agreed
10.1.5 subject to paragraph 4.3, provision of preferential credit facilities;	Agreed
10.1.6 subject to paragraph 4.2, facilitation of access to credit for Beneficiary Entities unable to access similar credit facilities through traditional means owing to a lack of credit history, high risk and/or lack of collateral;	Agreed
10.1.7 subject to paragraph 4.4, provision of training and/or mentoring to Beneficiary Entities which will assist the Beneficiary Entities to increase their operational and/or financial capacity; and	Agreed
10.1.8 Subject to paragraph 4.5, the maintenance by the Measured Entity of an Enterprise and Supplier Development unit which focuses exclusively on support of Beneficiary Entities or candidate Beneficiary Entities.	Agreed
10.2 The creation and/or development of the capacity of Beneficiary Entities which will enable them to manufacture and produce goods and/or provide services previously not available in the Republic of South Africa, may constitute a Qualifying Enterprise and Supplier Development Contribution, and will be measured as the rand value of monetary contributions made as well as investments into, loans made to or guarantees given for a Beneficiary Entity.	Agree
10.3 Provision of preferential credit facilities to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise and Supplier Development Contribution. Examples of such contributions include without limitation:	Agreed
10.3.1 Provision of finance to Beneficiary Entities at rates of interest below the applicable rate. Such contributions will be measured as the value of the differential between the actual interest rate provided to the Beneficiary Entity and the applicable rate;	Agreed
10.3.2 Relaxed security requirements or absence of security requirements for Beneficiary Entities unable to provide security for loans. Such contributions shall be measured as being 3% (three percent) of any positive differential between the	Agreed

initial capital value of the loan and the value of security taken; and	
10.3.3 settlement of accounts with Beneficiary Entities over a shorter period of time in relation to the Measured Entity's normal payment period, provided that the shorter period is no longer than 15 days. Preferential payment terms which extend beyond 15 days will not qualify as Qualifying Enterprise and Supplier Development Contributions;	Agreed
10.4 Provision of training and/or mentoring to a Beneficiary Entity by a Measured Entity may constitute a Qualifying Enterprise and Supplier Development Contribution. Such contributions will be measured by quantifying the cost of time spent by staff or management of the Measured Entity in carrying out such initiatives. Any travel or commuting time may not be included in this cost. Furthermore, a clear iustification must be supplied with respect to the calculation of such time costs incurred, commensurate with the level of seniority and expertise of the trainer or mentor. Common forms of such contribution include without limitation:	Agreed
10.4.1 Professional and consulting services;	Agreed
10.4.2 IT services; and	Agreed
10.4.3 Any other services which help to increase the entity's financial and/or operational capacity and which have not also been accounted for under skills development.	Agreed
10.5 The maintenance of an Enterprise and Supplier Development unit by the Measured Entity may constitute a Qualifying Enterprise and Supplier Development Contribution. Common examples of such contributions include without limitation the salaries and wages of staff and other expenses involved in the operation of such Enterprise and Supplier Development unit. Notwithstanding the aforegoing, only that portion of salaries and wages which relate to time spent by the staff in and the other expenses related to the promotion and implementation of Enterprise and Supplier Development in respect of Beneficiary Entities or candidate	Agreed

Beneficiary Entities should be taken into consideration under Enterprise and Supplier Development contributions.	
10.6 Payments made by the Measured Entity to third parties to perform Enterprise and Supplier Development initiatives on the Measured Entity's behalf may constitute a Qualifying Enterprise and Supplier Development Contribution.	
Insertion of paragraph 11 under Code 400, Statement 400 - Measurement of Enterprise and Supplier Development Contributions	
<u>**11 MEASUREMENT OF ENTERPRISE AND SUPPLIER DEVELOPMENT CONTRIBUTIONS**</u>	Agreed
<u>11.1 Qualifying Contributions are measurable using the formula "A" in Annexe 400(B)</u>	
ANNEXE [5] <u>4</u>00 (A)	
A: B-BBEE PROCUREMENT SPEND:	
A = the sum of (B x C)	
Where	
A is the calculated total B-BBEE Procurement Spend for the Measured Entity. It is equal to the sum of the result of the product of B and C for each Supplier of the Measured Entity not excluded under the exclusion from total measured procurement spend;	
B is the value of procurement falling within Total measured procurement spend and not excluded under the exclusion from total measured procurement spend from each Supplier of the Measured Entity;	
C is the B-BBEE Procurement Recognition Level of each such Supplier of the Measured Entity.	
	Agreed

B: THE CALCULATION OF PREFERENTIAL PROCUREMENT CONTRIBUTIONS TO B-BBEE:	
A = B/C X D	
Where	
A is the calculated preferential procurement score for 2.1.1, 2.1.3, 2.1.4 and 2.1.5 in the scorecard under statement **[5]** 4̲00 for the Measured Entity;	
B is the total B-BBEE Procurement Spend of the Measured Entity calculated under measurement of B-BBEE Procurement Spend as a percentage of Total Measured Procurement Spend of that Measured Entity;	
C is the compliance target for each criteria specified in the scorecard under statement **[5]** 4̲00;	
D is the Weighting points allocated to each criteria specified in the scorecard under statement **[5]** 4̲00.	

ANNEXE 400(B)			
Annexe 400B - Benefit Factor Matrix			
Qualifying Contribution Type	Contribution Amount	Benefit Factor	
Grant and Related Contributions			Agreed
Grant Contribution	Full Grant Amount	100%	Agreed
Direct Cost incurred in supporting Enterprise and Supplier Development	Verifiable Cost (including both monetary and non-monetary)	100%	Agreed
Discounts in addition to normal business practices supporting Enterprise and Supplier Development	Discount Amount (in addition to normal business discount)	100%	Agreed

Overhead Costs incurred in supporting Enterprise and Supplier Development (including people appointed in Enterprise and Supplier Development)	Verifiable Costs (including both monetary and non - monetary)	70%	
Loans and Related Contributions			Agreed
Interest-Free Loan with no security requirements supporting enterprise and supplier development	Outstanding Loan Amount	70%	Disagree – The benefit factor is too low to incentivize the granting of such loans. BUSA proposes 100%
Standard Loan to Enterprise and Supplier Development Beneficiaries	Outstanding Loan Amount	50%	Agreed
Guarantees provided on behalf of a Beneficiary entity	Guarantee Amount	3%	Clarity on calculation must be provided. This is too low, BUSA proposes it be increased.
Lower Interest Rate	Outstanding loan amount	Prime Rate - Actual Rate	
Equity Investments and Related Contributions			Disagree – there is no sense in allowing a benefit factor of only 70% when this is a fully risk bearing investment and in most instances will not be considered recoverable
Minority Investment in Enterprise and Supplier Development Beneficiaries	Investment Amount	70%	**Comment**
Qualifying Contribution Type	Contribution Amount	Benefit Factor	Agreed
Enterprise and Supplier Development Investment with lower dividend to financier	Investment Amount	Dividend Rate of Ordinary Shareholders -	

		Actual Dividend Rate of Contributor	
Contributions made in the form of human resource capacity	-	-	BUSA proposes that the previous text be retained as is. Reducing the benefit factor generally would not force entities to do more, which is what may be the belief or rational behind this change. It must be remembered that enterprise is always going to use the path of least resistance. This change will therefore force entities to not support this type of development in favour of others which have a more even correlation with the cost actually incurred. The reduction of this factor further serves to indicate that the writers of this assume that employees time have little or no value to a enterprise and that this type of development has been seen to be an abused route to points in the past. This type of thinking is flawed and shows a disconnect between the law maker and those that he chooses to have practice it.
Professional services rendered at no cost and supporting Enterprise and Supplier Development	Commercial hourly rate of professional	60%	See above
Professional services rendered at a discount and supporting Enterprise and Supplier Development	Value of discount based on commercial hourly rate of professional	60%	See above

Time of employees of Measured Entity productively deployed in assisting beneficiaries	Monthly salary divided by 160	60%	
Other Contributions	-	-	Disagree – Clarity needs to be given with regard to the actual calculation.
Shorter payment periods	**[Percentage of invoiced amount]** Percentage of invoiced amount multiplied by 15% (being an approximation of the cost of short term funding)	Percentage being 15 days less the number of days from invoice to payment. Maximum points that can be scored is 15% of 15 points under Enterprise and Supplier Development	Disagrees, 15% should be higher.

ANNEXE 400(B1)	
A: Qualifying Contributions are measurable on the following basis:	
A = B/C X D	Agree
Where	
A is the score achieved in respect of the Qualifying Contributions made by the Measured Entity	
B is the average annual value of all Qualifying Contributions made by the Measured Entity measured from the commencement or the this statement or the Inception Date to the date of measurement	
C is compliance target in respect of the Qualifying Contributions as specified in the scorecard for statement 400	

D is the Weighting points allocated to the criteria under the scorecard for statement 400.	
Amendment of heading of Code 700, Statement 700 - the General Principles for measuring Socioeconomic Development	
CODE SERIES [7]00: MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENT OF BROADBASED BLACK ECONOMIC EMPOWERMENT	Agree
CODE SERIES 500: MEASUREMENT OF THE SOCIO-ECONOMIC DEVELOPMENT ELEMENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	Agree
STATEMENT [7]00: THE GENERAL PRINCIPLES FOR MEASURING SOCIO-ECONOMIC DEVELOPMENT	Agree
STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING SOCIO-ECONOMIC DEVELOPMENT	Agree
CODE SERIES 500: MEASUREMENT OF THE SOCIO- ECONOMIC DEVELOPMENT ELEMENTS OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT	
STATEMENT 500: THE GENERAL PRINCIPLES FOR MEASURING THE SOCIO - ECONOMIC DEVELOPMENT ELEMENT	
Issued under section 9 of the Broad-Based Black Economic Empowerment Act of 2003	
Arrangement of this statement	
Para Subject Page	
1 Objectives of this statement 2	
2 The SED scorecard 2	
3 Key Measurement Principles 2	
4 Measurement of Socio-economic development contributions 3 3	
5 The Benefit Factor Matrix 3	

1 OBJECTIVES OF THIS STATEMENT	
The objectives of this statement are to specify:	
1.1 the Socio-Economic Development (SED) and Sector Specific Contributions scorecard;	Agree
1.2 the key measurement principles applicable when calculating Socio-Economic Development Contributions; and	Agree
1.3 The formula for calculating the individual criteria specified in the SED scorecard.	Agree
2 THE SED SCORECARD	Disagree – How do you determine a target if a enterprise makes a loss if these paragraphs are removed?
2.1.1 [The Net Profit After Tax (NPAT) or average target applies unless]:	The formula addressing scenarios where entities are not profitable has been removed which is welcomed
2.1.1.1 [the company does not make a profit last year or on average over the last five years]	
2.1.1.2 [the net profit margin is less than a quarter of the norm in the industry].	
2.1.2 [If the Turnover is to be used, the target will be set at:]	
2.1.2.1 [1% x Indicative Profit Margin (NPAT/Turnover) x Turnover]	
2.1.2.2 [Indicative profit margin is the profit margin in the last year where the company's profit margin is at least one quarter of the industry norm.]	
2.2 The following table represents the criteria and method used for deriving a score for Socio- Economic Development under this statement:	

Criteria	Weighting Points	Compliance Target	
[Average] Annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target.	5	1% of NPAT	Disagree – companies wanting to make larger than normal contributions, for actual philanthropic reasons will now not do so, or do so in the very extreme as the incentive to do so have been removed. This removal has no practical basis as whether a enterprise contributes a once off large amount or piecemeal still, in principle, will lead to the exact same effect.
2.3 The weighting points in the SED scorecard represent the maximum number of points possible for each of the criteria.			Agree
3 KEY MEASUREMENT PRINCIPLES			
3.1 General principles:			
3.1.1 Measured Entities receive recognition for any Socio-Economic Development Contributions that are quantifiable as a monetary value using a Standard Valuation Method.			Agree
3.1.2 Socio-Economic Development Contributions of any Measured Entity are recognisable **[cumulatively]** <u>annually</u>			Disagree – Cumulative contributions averaged over a period of time would allow for fluctuations in profit.
3.1.2.1 No portion of the value of any Socio-Economic Development contribution that is payable to the beneficiary after the date of measurement can form part of any calculation under this statement			Agree
3.2 Socio- Economic Development Contributions:			
3.2.1 Socio-Economic Development Contributions consist of monetary or non-monetary contributions actually initiated and implemented in favour of beneficiaries by a Measured Entity with the specific objective of facilitating income generating activities for targeted beneficiaries.			This definition of qualifying spend, while noteworthy in itself, seems to be classical enterprise development. The wording seems to make clear that there is a forced exclusion

	of qualifying contributions to the following groups of people, who by virtue of their status, are not in a position to generate income. • Children and specifically orphans • Pensioners • Sick and Terminally sick • Disabled or medically unfit to work • People in transition such as recovering addicts, battered and abused women and men, victims of crime, victims of natural disasters Over and above this – the definition also seeks to disallow any an all contribution to organisations that take on roles in communities that are for the greater good of such communites. Examples are: • Medical services • Life Saving clubs • Trauma counseling services • Orphanages and homes • Feeding stations • Creches Further to this, if the newly stated objective is what it is wanted to be then the simplest solution would be to suggest an increased target in ED and the removal of this element from the scorecard. SED is just that – Socio Economic. It is there as a follow up from globally accepted contribution called CSI in which companies

	support communities around them – socially! This ignores the valuable work done by purely welfare organisations
3.2.2 The full value of Socio-Economic Development Contributions made to beneficiaries is recognisable if at least **[75%]** 100% of the value directly benefits black people.	The administrative burden in relation to proving the % of black beneficiaries is prohibitive. This is an unrealistic percentage and the unintended consequences will be to discourage socioeconomic development contributions. BUSA proposes an increase to 85%, above that company should be given bonus point.
3.2.3 [If less than 75% of the full value of Socio-Economic Development Contributions directly benefits black people, the value of the contribution made multiplied by the percentage that benefits black people, is recognisable].	Disagree – see above
3.2.4 The following is a non-exhaustive list of qualifying initiatives towards Income Generation:	
3.2.4.1. Any programme that creates sustainable access to the economy for its beneficiaries.	Agree
3.2.4.2. Any programme which supports the beneficiaries participating in public-private partnerships to i.e. build educational infrastructure (schools, classrooms and facilitate human resource development (training of educators and learners).	Agree
3.2.4.3. Improvement of capacity to work, including self-employment, by provision of training and /or mentoring of beneficiaries to assist them to improve their employability.	Agree
3.2.4.4. Programmes that promote HIV/AIDS awareness.	What about other chronic occupational

	illnesses.
3.2.4.5. Providing opportunities for adult education	If this is a stated objective, why remove the 1.25 multiplier in skills development element. Lets have some consistency please
3.2.4.6. Infrastructure development for rural areas and marginalised areas in order facilitate access to sustainable economic activities.	Agree
4 MEASUREMENT OF SOCIO-ECONOMIC DEVELOPMENT CONTRIBUTIONS	
Socio-Economic Development Contributions are measurable using the formula in Annexe 500 **[700]** (B).	Agree
5 THE BENEFIT FACTOR MATRIX	Agree
The Minister may from time to time, by notice in the gazette, revise or substitute the Benefit Factor Matrix. Any changes will only be applicable to Compliance Reports prepared for a Measured Entity in respect of the first 12-month period following the gazetting of a revision or substitution.	

Annexe 500(A) - Benefit Factor Matrix			
Qualifying Contribution type	**Contribution Amount**	**Benefit Factor**	

Grant and Related Contributions			
Grant Contribution	Full Grant Amount	100%	Agree
Direct Cost incurred in supporting socio-economic development, sector specific initiatives or Qualifying Socio-Economic Development Contributions	Verifiable Cost (including both monetary and nonmonetary)	100%	Agree
Discounts in addition to normal business practices supporting socioeconomic development, sector specific initiatives or Qualifying Socio-Economic Development Contributions	Discount Amount (in addition to normal business discount)	100%	Agree
Overhead Costs incurred in supporting socio-economic development, sector specific initiatives or Qualifying Socio-Economic Development Contributions	Verifiable Costs (including both monetary and non-monetary)	80%	Agree
Contributions made in the form of human resource capacity			
Professional services rendered at no cost supporting socio-economic development, sector specific initiatives or Qualifying Socio- Economic Development Contributions	Commercial hourly rate of professional	80%	Agree
Professional services rendered at a discount supporting socio-economic development, sector specific initiatives or Qualifying Socio- Economic Development Contributions	Value of discount based on commercial hourly rate of professional	80%	Agree

Time of employees of Measured Entity productively deployed in assisting beneficiaries and supporting socio-economic development, sector specific initiatives or Qualifying Socio-Economic Development Contributions	Monthly salary divided by 160	80%	Agree

PART 2: DEFINITIONS		
"Accreditation Body"	means the South African National Accreditation System or any other Entity appointed by the Minister from time to time, tasked with: (A) accrediting Verification Agencies; and (B) developing, maintaining and enforcing the Verification Standards	Agree – however, clear disclosure regarding IRBA should appear here.
"Absorption"	means a measure of the learner's ability to successfully secure formal permanent or long-term contract employment, or to proceed with further education and training	This is a problematic definition as it leads to difficulty in determining or measuring "ability" What is the definition of 'long term contract'?
"Apprenticeship"	Means an agreement between an apprentice and an employer for a set period of time during which the apprentice works and receives training in the workplace.	Agreed

"Black new entrants"	means black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in any other Entity which has a total value of more than **[R20,000,000]** <u>850,000,000</u> measured using a standard valuation method;	Agree but need advice on how the Department arrived at 850,000.000
"BEE Procurement Recognition Level"	means the percentage BEE Procurement Recognition Levels as deteJGned: (A) for Enterprises that are neither Qualifying Small Enterprises nor Exempted Micro-Enterprises, using statement 000; (B) for Qualifying Small Enterprises, using statement **[8]**<u>6</u>00; (C) for Exempted Micro-Enterprises, the <u>applicable</u> deemed BEE Procurement Recognition **[of 100% and BEE Status of Level 4 Contributor]** under statement **[8]**<u>0</u>00;	Agreed
"Black people"	has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by birth or descent; or are citizens of the republic of South Africa by naturalisation: **[(A) occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993 before 27 April 1994; or;** **(B) occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalisation before then on]** (a) before 27 April 1994; or <u>(b) after 27 April 1994 and who would have been entitled to acquire</u>	Agreed

	<u>citizenship by naturalisation prior to that date but were precluded from</u> <u>doing so by Apartheid policies;</u>	
"Certified Learning Programme"	means any Learning Programme for which the Measured Entity has: (A) any form of independent written certificate as referred to in the "Learning Achievements" column of the Learning Programme Matrix; or if it does not have such certification: (B) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 300 confiJGng the employee has: (i) enrolled for, is attending and is making satisfactory progress in the Learning Programme; or (ii) enrolled for but not attended the Learning; or (iii) attended the Training Programme but has failed an evaluation of their learning progress **[(a) any form of independent written certification as referred to in the** **"Learning Achievements" column of the Learning Programmes Matrix; or**	Agreed

	if it does not have such certification: **(b) an enrolment certificate issued by the independent person responsible for the issue of the certification referred to in statement 400** **confiJGng the employee has:** **(i) enrolled for, is attending and is making satisfactory progress in the** **Learning Programme; or** **(ii) enrolled for but not attended the Learning; or** **(iii) attended the Training Programme but has failed an evaluation of** **their learning progress;]**	
<u>"Employed (section 18 (1))"</u>	<u>means a learner that was in the employment of the employer party to the</u> <u>learnership agreement concerned when the agreement was concluded.</u> <u>The learner's contract of employment is therefore not affected by the</u> <u>agreement.</u>	Agreed
<u>"Employed (section 18 (2))"</u>	<u>means a learner that was not in the employment of the employer party to</u> <u>the learnership agreement concerned when the agreement was concluded. The employer and learner must therefore enter into a contract</u>	Agreed

	of employment.	
"Enterprise Development Contributions"	means monetary or non-monetary contributions carried out for the following beneficiaries, with the objective of contributing to the development, sustainability and financial and operational independence of those beneficiaries: (a) **[Category A]** Enterprise Development Contributions involves Enterprise Development Contributions to Exempted Micro-Enterprises or Qualifying Small Enterprises which are more than 50% black owned or black women owned; **[(b) Category B Enterprise Development Contributions involves**	Agreed Confining the definition of enterprise development beneficiaries to small black owned companies is a positive move which channels support to where it is most needed. However, there are suppliers and others in big corporate value chains that began as small companies but, which through an ED programme, have now grown into large enterprises. **Recommendations** 1. Make provision for previously small companies whose turnover has increased to over R50 million as a result of ED support from the ME to continue to be recognized as ED beneficiaries to ensure their sustainability. 2. In the interests of consistency around promoting black women owned businesses, 30% black women owned QSEs and EMEs should be included in the definition of ED beneficiaries

	Enterprise Development Contributions to any other Entity that is 50% black owned or black women owned; or 25% black owned or black women owned with a BEE status of between Level One and Level Six;]	
Exempted Micro Enterprises ("EME")	means an Entity with an annual turnover of less than **[R5 (five)]** R 10 (ten) million;	Agreed
Industry Specific Initiatives"	means the qualifying contributions that are unique to the industry in which enterprises operate. For the purposes of this statement an industry may be grouped in major divisions in accordance with the Standard Industrial Classification Coding System used by Statistic South Africa.,	Agreed
"Internship"	means an opportunity to integrate career related experience into an undergraduate education by participating in planned, supervised work.	Agreed
"Learnership"	means a work-based route to a qualification. It is a workplace education and training programme comprising both structured practical workplace (on- the -job) experience and structured theoretical training.	Agreed, however this needs to be aligned with the proposed learning matrix which describes a different program

"Imported goods"	means procured goods and services represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry	Agreed
"New Enterprise"	means an early stage business which is similar to a start-up. However, an early stage business is typically 3 years old or less.	Agreed, but what is proof of such?
["Ownership Fulfilment"]	**[has the same meaning as referred to in the ownership scorecard in statement 100;]**	Disagree - see comment earlier
"PIVOTAL report"	means a report on 'Professional, Vocational, Technical and Academic Learning' programmes that meet the critical needs for economic growth and social development, generally combining course work at universities, universities of technology and colleges with structured learning at work	More clarity is required regarding the format and requirements of a PIVOTAL report.
"QSE"	means a Qualifying Small Enterprise that qualifies for measurement under the qualifying small Entity scorecard with a turnover of between **[R5 and R35 million]** R10 and R50 million;	Agree
Qualifying Enterprise Development	means a collective term describing **[Category A and B]** Enterprise Development Contributions **[and in particular Enterprise Development**	Agree

Contributions	**Contributions]** targeting black owned EME's and QSE's, and black youth in rural, and underdeveloped areas in statement **[5]** 400;	
"Qualifying Local Supplier Development Beneficiary"	means any existing or new entity that qualifies as an Enterprise Development Beneficiary or is more than 50% black owned, and receives the Local Supplier Development support, in accordance with Statement 400, from the Measured Entity	Agree
["Uncertified Learning Programme"]	**[means any Learning Programme of the Measured Entity that is not a Certified Learning Programme;]**	
"Value-Adding Suppliers"	means an Entity registered as a vendor under the Value-Added Tax of 1991, whose Net Profit Before Tax summed with its Total Labour Cost exceeds 25% of the value of its Total Revenue	Agree

Conclusion:

The period for comments is too short, given that code 600 was not released at the same time making it difficult for stakeholders to apply their minds to the full changes.

At a country level, BUSA can support the intent and the broad direction that the proposed changes to the Codes are moving. We believe there needs to be a balance of aggressive implementation with business reality, existing policy and current conditions. The current global and local conditions for doing business are tough. Most businesses are struggling to maintain success. Given the context, transformation objectives as translated into the Codes need to be very sensitive to what is rationally doable and achievable. Businesses should be encouraged to support economic development and sustainability (which includes transformation) in the country. The timing and targets and measures should reflect a much higher level of consciousness of business circumstances.