

TERMS OF REFERENCE FOR THE ESTABLISHMENT OF THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) SECTOR COUNCIL



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1. PREAMBLE

Recognising the Constitution of the Republic of South Africa Act 108 of 1996 inter alia, section 9 on equality and unfair discrimination in the Bill of Rights states the imperative of redressing historical and social inequalities;

Further recognising that the Broad Based Black Economic Empowerment (BBBEE)

Amendment Act of 2014 seeks to promote the achievement of the right to equality, increase broad based and effective participation of Black people in the economy and promote equal opportunity and equal access to government services; and the accompanying amended BBBEE Generic Code of Good Practice including necessary score card and the empowerment elements contained therein;

Also considering the Electronic Communications Amendment Act No. 1 of 2014, seeks to promote the empowerment of Black people, with reference to women, youth and people with disabilities; and to promote SMMEs in the ICT sector.

In order to address certain inequalities in the Information Communication Technology (ICT) sector as identified by government in terms of the Codes of Good Practice as being of national strategic importance. Stakeholders made up of the industry associations, NEDLAC Community constituency and the DTPS signed and adopted the ICT Sector Code.

Furthermore, considering that the B-BBEE Amendment Act No. 53 of 2003 states that enterprises that operate in sectors where there is a sector code of good practice may only be measured in accordance with that code and in addition report annually to the sector council established for that sector.

Therefore, there is a need to monitor the signed and adopted B-BBEE ICT Sector Code for effective and efficient implementation.

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2. THE PURPOSE OF THE ESTABLISHMENT OF THE B-BBEE ICT SECTOR COUNCIL

The Council, guided by the legislation and policy instruments stated in the preamble, shall be established to perform, but not exclusively, the following functions:

- 2.1. Oversee the implementation of the B-BBEE ICT Sector Code by the ICT Sector
- 2.2. Monitor and report on compliance with the Sector Code.
- 2.3. Provide guidance on matters relating to black economic empowerment in the ICT sector.
- 2.4. Compile reports on the status of black economic empowerment in the ICT sector;
- 2.5. Share information with approved accreditation agencies conducting black economic empowerment ratings in the ICT sector;
- 2.6. Engage and advise the sector Minister, Regulators and other relevant regulatory entities regarding implementation of the ICT Sector Codes
- 2.7. Develop mechanisms and strategies to monitor compliance with the B-BBEE ICT Sector Code
- 2.8. Develop strategies for consultation with all Sector stakeholders regarding the B-BBEE ICT Sector Codes
- 2.9. Develop and implement an interactive portal to communicate the basic methods of applying the BBEE scorecard for all the different elements of B-BBEE
- 2.10. Develop baseline indicators, conducting or commissioning research for the purposes of ensuring the effective implementation of the B-BBEE ICT Sector Code
- 2.11. Report to Government and the B-BBEE Advisory Council on the implementation of the ICT Sector Codes
- 2.12. Advise on the amendments of the ICT Sector Codes and other pieces of legislation that hamper effective and efficient implementation of the transformation agenda.
- 2.13. Support government initiatives in monitoring and reporting on the impact of B-BBEE compliance within the Sector, specifically in respect of job creation, skills development, SMME development and support as well as employment equity, with emphasis on youth, women and persons with disability.

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3. NAME OF THE COUNCIL

The name of the Council is the B-BBEE ICT Sector Charter Council, hereafter referred to as “the Council”.

4. THE COMPOSITION OF THE COUNCIL

4.1. The Council shall consist of a maximum of eighteen members (18), incorporating representations from:

- ActSA
- Fibre To Home Council of Africa (FTTH)
- Institute of Information Technology Professionals of South Africa (IITPSA)
- Internet Society South Africa (ISOC-ZA)
- Internet Service Providers’ Association (ISPA)
- National Association of Broadcasters (NAB)
- South African Communications Forum (SACF)
- Wireless Access Providers’ Association (WASPA)
- WIFI Forum of South Africa (WFFSA)
- Regulators (ICASA and .ZADNA)
- ICT SMME Chamber
- Black IT Forum
- Black Business
- Youth
- Persons with Disability
- NEDLAC
- Women and,
- Labour Unions.Government (Department of Trade. Industry and Competition and Department of Communications and Digital Technologies).

4.2. The Councillors shall be appointed by the Minister of Telecommunications and Digital Technologies.

4.3. When appointing the Councillors, consideration shall be given to skills combinations comprising the following:

- a. Financial management
- b. Governance and Administration
- c. Leadership
- d. Writing
- e. Human capital
- f. Risk management
- g. Understanding of transformation, especially as it relates to ICT.

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- 4.4. The Councillors shall be appointed by the Minister (DCDT) and shall serve in the Council for a period of four years.

5. DISQUALIFICATION OF COUNCILORS

- 5.1. A person may not be appointed or continue as a Council Member if such person:
- a. Has at any time been removed from an office of trust on account of misconduct; or
 - b. Has been found guilty in terms of prevention of corruption legislation, or
 - c. Has been declared an unrehabilitated insolvent person; or
 - d. Has used status as a Councillor to unduly benefit himself/herself.
 - e. Has been declared by a competent court to be mentally unfit; or
 - f. Has at any time, since 27 April 1994, been convicted of a crime by court of justice within the jurisdiction of the Republic of South Africa; or
 - g. Misses three (3) consecutive Council meetings without an apology.
 - h. Misses for (4) consecutive meetings of the Council irrespective of whether an apology was tendered or not.
 - i. Is no longer a member of the Sub-sector or constituency that nominated them.
 - j. Has failed to disclose an interest that conflicts with his/her role in the Council.
 - k. Has been found to have utilized his/her role as Councillor to derive undue benefits.
 - l. Has misappropriated the resources of the Council for own benefit.

6. GOVERNANCE PRINCIPLE

- 6.1. The Council shall be guided by the following basic principles:
- a. Independence
 - b. Transparency
 - c. Fairness
 - d. Integrity
 - e. Good Corporate Governance
 - f. Equitable Socioeconomic Transformation.

7. ANNUAL REPORTS

- 7.1. The Council shall, in each year of its existence, develop and publish on its website, an Annual Report that reflects its staffing, finances and sources thereof, how the funds were disbursed and its annual performance.
- 7.2. The Council shall submit annual reports through its Secretariat to the Line Ministry,

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the Department of Trade and Industry (the DTI) and the B-BBEE Advisory Council where applicable.

- 7.3. Before the Secretariat submits annual reports of the Council to the Line Ministry, the DTI and B-BBEE Advisory Council, such reports must be tabled before the Council for approval.
- 7.4. The annual report of the Council shall include the following:
 - a. Report on the work of the Council including its meetings held in terms of its Constitution.
 - b. Programmes and activities as determined and adopted by the Council.
 - c. Report on the initiatives undertaken by enterprises within the Sector, in collaboration with the Council.
 - d. Breakdown of B-BBEE Compliance across the Sector include analyses of compliance per Sub-sector.
- 7.5. Provide any relevant information which would be useful in assessing the state of BBEE in the ICT Sector; and
- 7.6. Audited financial report by an independent qualified and admitted auditor, in cases where the Council is self-funded and managing its own funds.

8. CONFLICT OF INTEREST

- 8.1. Should a Member of the Council have a personal or financial interest in any proposed or discussed matter or meeting by the Council, such a Member shall immediately disclose fully the nature of his or her interest, disclose such interest and withdraw his or her participation in such meeting in order to ensure that the decisions of the Council are taken in a fair, unbiased and proper manner. Such a declaration and participation withdrawal should be duly recorded in the minutes.
- 8.2. If a Member of Council fails to declare his or her interest in a matter or decision taken by the Council, then in such instances, the Council shall have the discretion to either ratify the decision and refer such Member of Council to its disciplinary processes as referred to in this Constitution and Code of Conduct or declare such decision null and void.

9. THE CONSTITUTION OF THE COUNCIL, CODE OF ETHICS AND CODE OF CONDUCT

- 9.1. The Council shall draft and adopt its Constitution, Code of Ethics and Code of Conduct.
- 9.2. The Council shall review and adopt the Constitution within 60 working days of the being established.
- 9.3. The Constitution of the Council may be amended from time to time after consultation

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with the Council Members and other stakeholders, where necessary.

- 9.4. The Council may, by resolution, formulate rules to further regulate its proceedings.
- 9.5. Members shall abide by the Constitution of the Council, Code of Ethics and Code of Conduct.
- 9.6. The Council shall enforce the rules and procedures of its Constitution, Code of Ethics and Code of Conduct on all Members and officials of the Council and to institute disciplinary actions where appropriate.
- 9.7. The Chairperson shall be the main authority to speak on behalf of the Council. The Council may, by resolution, agree to delegate any other Councillor to be responsible for all communication matters relating to the Council.
- 9.8. The Constitution of the Council is not binding on the Line Department, DTI and BEE Commission.

10. MEETINGS OF COUNCIL

- 10.1. The Council shall have at least one meeting per quarter.
- 10.2. A quorum for meetings shall be 50% plus one (1) of Council Members, present in person or virtually.
- 10.3. All Members of Council shall have the right to vote at meetings.
- 10.4. There shall be an Annual General Meeting every year, which meeting shall be held not more than fifteen (15) months after the previous Annual General Meeting. Members of the ICT Sector shall be given at least twenty-one (21) days' notice thereof.
- 10.5. The Chairperson of the Council may call a Special General Meeting at any time, provided that at least 14 days' notice of any Special General Meeting is given. The notice of such a meeting should have a clear agenda and proposed resolutions for adoption.
- 10.6. Where a member deems a need for a special meeting to take a decision relating to the business and mandate of the Council, such a request shall be conveyed to the Chairperson of the Council in writing including the reasons and matter/s on which decisions /resolutions are required.
- 10.7. A final decision of the Council shall be made by a simple majority of the Members of the Council at a meeting.
- 10.8. Amendments to this Constitution shall require a two thirds majority of the Council.

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11. FUNDING OF THE COUNCIL

- 11.1. The funding of the operations of the Council shall be a joint responsibility between the private sector and the Line Ministry responsible for the sector. The Line Ministry might provide initial funding to set up and launch the Council. Such funding will be counted as a portion of the Ministry's contribution to the entire funding of the Council
- 11.2. The financial year of the Council shall be the period commencing on the 1st of April each year and ending on the 31st of March or such other period as the Council may determine.
- 11.3. The Council may generate revenue through transfers from government, donations and membership fees.
- 11.4. The Council will develop a funding model for its long-term sustainability, which will include accountability mechanisms for acquired finances, including publishing their finances in the Annual Report.
- 11.5. The finances of the Council shall be externally audited.
- 11.6. The Council shall have clear costed programmes, projects and operational plans with projected expenditure that should be shared with both the Department and the Sector.
- 11.7. The Council shall exercise financial prudence, which shall include the proper keeping of books on the use of its resources such as assets, funds, and electronic systems.

12. RECRUITMENT AND REMUNERATION OF THE COUNCIL SUPPORT STAFF

- 12.1. The Council shall establish the Secretariat, which comprises the Administrative Head and support personnel.
- 12.2. The Secretariat of the Council shall report to the Council through the Chairperson.
- 12.3. The Secretariat shall perform strategic, operational, secretariat support functions and any other functions as determined by the Council.
- 12.4. The Secretariat shall be appointed in accordance with the Council's recruitment policy. Where the policy has not been finalised or adopted, the Council shall ensure that the recruitment is transparent and competitive.
- 12.5. The Council may constitute a Recruitment Committee that will be responsible for recruitment of the Secretariat and other support staff.
- 12.6. The Councillors shall develop and adopt a Remuneration Policy that will provide remuneration guidelines for both Councillors and Council staff.

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13. GOVERNANCE

- 13.1. The Council policies shall be reviewed and adopted after every two years.
- 13.2. The Council may constitute Committees and other structures they consider necessary to support its work.
- 13.3. The Agendas of the Council shall focus on the core work of the Council.
- 13.4. Any decision that constitutes a deviation from the Council constitution and policies shall be first presented to the Council, with the motivations thereof, before implementation. Such a decision must always be legal and comply with the provisions of the South African Constitution.
- 13.5. The Minister may, at any given time, request a meeting with the Council to discuss or seek clarity on any matter relating to transformation. Such a decision shall be preceded by formal correspondence directed at the Chairperson.
- 13.6. The Council may also request a meeting with the Minister on any matters relating to transformation, either to table a report, later him to certain matters relating to transformation or similarly seek his support in this regard.
- 13.7. Meeting request from the Council and the Minister shall at all times be preceded by a proposed draft agenda.
- 13.8. The Council must register as a legal entity that exists for non-profit making to ensure that all resources, funding or otherwise, are vested in the entity and properly accounted for through Annual Reports that can be shared with the funders.
- 13.9. At the end of its term, the Council shall provide a handover report that details work done during their tenure, funding received and how that was utilized and what remains. All the remaining funding shall fall under the control of the new Council.
- 13.10. The Minister may dissolve the Council and initiate a process to appoint the new council in instances where:
 - a. Conflicts among Councillors have rendered the Council ineffective in discharging its mandate.
 - b. There are so many resignations that the Council cannot form a quorum in any of its meetings.
- 13.11. The Council Chairperson and Deputy Chairperson shall be appointed by the Minister.