



Broad-Based Black Economic Empowerment

**Draft
Transformation Charter
for Agriculture**

– AgriBEE –

AgriBEE Steering Committee

2 November 2005



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1 INTRODUCTION

This document represents the Steering Committee's recommendation to the Minister on the AgriBEE framework launched in July 2004. The proposed recommendations are based on a process and findings of consultations following the launch of the AgriBEE framework. The document serves as draft guideline for empowerment in the sector. This charter will be published as a Code of Good Practice for the Agricultural Sector.

The process of consultation on the launched AgriBEE framework was driven by sixteen members from the sector as a whole nominated in their personal capacities. The committee held seven meetings to agree on how to drive the consultation process, monitor progress, consider all fifty five written comments received, agree on high-level recommendations and to work on a final report to the Minister. The committee operated according to the following Terms of Reference (TOR):

- ✦ Ensure the consultation of a diverse range of all the stakeholders in the agricultural sector on the proposed focal elements and proposed targets and timeframes for AgriBEE. In this regard it is expected that the AgriBEE Steering Committee will target women, youth, labour and rural communities in its consultation.
- ✦ Lead, facilitate, and manage the discussion on the key strategic approaches—including the application of a balanced scorecard approach; the link to the Agricultural Sector Plan and other Government initiatives that can be applied to achieve the objectives of the AgriBEE Framework.
- ✦ Identify possible gaps in the draft AgriBEE Framework and ensure adequate consultation and reporting on these.
- ✦ Consider and make proposals on an effective reporting, monitoring and evaluation systems for the AgriBEE Charter that is in line with the Broad Based Black Economic Empowerment Legislation and that take into consideration the complexity of the Agricultural Sector in South Africa.
- ✦ Prepare interim reports for the attention of the Minister on a monthly basis and a final report on its work and findings at the end of the term of work. The final report will also be presented to a Sectoral Meeting.

The consultation process targeted organised agriculture (primary and secondary) and related businesses. Workshops were held for cross-cutting stakeholders such as labour, youth, women and disabled groups with common interest in agriculture. Provincial launches and consultations were held for the majority of people outside organised agriculture.

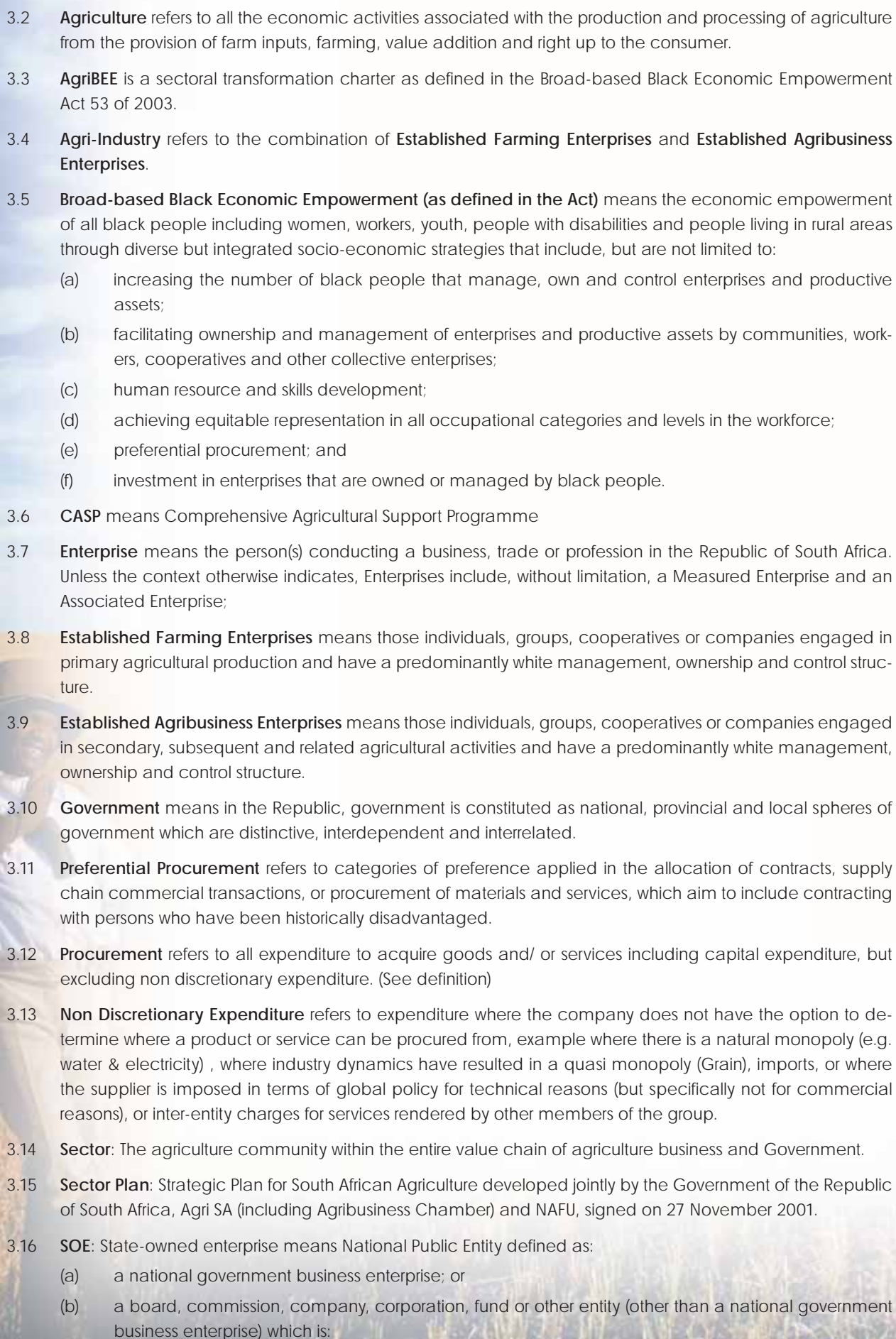
2 SCOPE OF APPLICATION

- 2.1 AgriBEE applies to the entire value chain in the South African agricultural sector, including all economic activities relating to provision of agricultural inputs, services, farming, processing, distribution, logistics and allied activities that add value to agricultural products.
- 2.2 SMMEs participate in AgriBEE in line with the BBBEE Act 53 of 2003, National Small Business Act 102 of 1996 and Codes of Good Practice.
- 2.3 Overlaps between Charters and Sector Charters are dealt with in accordance with the Codes of Good Practice.
- 2.4 Multinationals and other relevant or related matters are dealt with in accordance with the Latest Codes of Good Practice (to be published).

3 DEFINITIONS

For purpose of clarification and to avoid ambiguity the following terms apply to this Framework:

- 3.1 **The Act** is the Broad-Based Black Economic Empowerment Act 53 of 2003.

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- 3.2 **Agriculture** refers to all the economic activities associated with the production and processing of agriculture from the provision of farm inputs, farming, value addition and right up to the consumer.
- 3.3 **AgriBEE** is a sectoral transformation charter as defined in the Broad-based Black Economic Empowerment Act 53 of 2003.
- 3.4 **Agri-Industry** refers to the combination of **Established Farming Enterprises** and **Established Agribusiness Enterprises**.
- 3.5 **Broad-based Black Economic Empowerment (as defined in the Act)** means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:
- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
 - (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
 - (c) human resource and skills development;
 - (d) achieving equitable representation in all occupational categories and levels in the workforce;
 - (e) preferential procurement; and
 - (f) investment in enterprises that are owned or managed by black people.
- 3.6 **CASP** means Comprehensive Agricultural Support Programme
- 3.7 **Enterprise** means the person(s) conducting a business, trade or profession in the Republic of South Africa. Unless the context otherwise indicates, Enterprises include, without limitation, a Measured Enterprise and an Associated Enterprise;
- 3.8 **Established Farming Enterprises** means those individuals, groups, cooperatives or companies engaged in primary agricultural production and have a predominantly white management, ownership and control structure.
- 3.9 **Established Agribusiness Enterprises** means those individuals, groups, cooperatives or companies engaged in secondary, subsequent and related agricultural activities and have a predominantly white management, ownership and control structure.
- 3.10 **Government** means in the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
- 3.11 **Preferential Procurement** refers to categories of preference applied in the allocation of contracts, supply chain commercial transactions, or procurement of materials and services, which aim to include contracting with persons who have been historically disadvantaged.
- 3.12 **Procurement** refers to all expenditure to acquire goods and/ or services including capital expenditure, but excluding non discretionary expenditure. (See definition)
- 3.13 **Non Discretionary Expenditure** refers to expenditure where the company does not have the option to determine where a product or service can be procured from, example where there is a natural monopoly (e.g. water & electricity) , where industry dynamics have resulted in a quasi monopoly (Grain), imports, or where the supplier is imposed in terms of global policy for technical reasons (but specifically not for commercial reasons), or inter-entity charges for services rendered by other members of the group.
- 3.14 **Sector:** The agriculture community within the entire value chain of agriculture business and Government.
- 3.15 **Sector Plan:** Strategic Plan for South African Agriculture developed jointly by the Government of the Republic of South Africa, Agri SA (including Agribusiness Chamber) and NAFU, signed on 27 November 2001.
- 3.16 **SOE:** State-owned enterprise means National Public Entity defined as:
- (a) a national government business enterprise; or
 - (b) a board, commission, company, corporation, fund or other entity (other than a national government business enterprise) which is:

- (i) established in terms of national legislation;
 - (ii) fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation; and
 - (iii) accountable to Parliament.
- 3.12 Stakeholders is used as a broad term to describe participants in the entire agricultural value chain as well as current and potential beneficiaries of AgriBEE including government.
- 3.13 Youth people between the ages of 14-35 as defined in the National Youth Commission Act 19 of 1996.
- The definitions in the BBBEE Act (53 of 2003) and the Codes of Good Practice as published by the Department of Trade and Industry will be accepted in cases where clarity regarding definitions is required. Refer to Chapter 8: GLOSSARY.

4 OBJECTIVES

- 4.1 The objectives of the Broad Based Black Economic Empowerment Act No. 53 of 2003 are to facilitate broad-based black economic empowerment by:
- 4.1.1 Promoting economic transformation in order to enable meaningful participation of black people in the economy;
 - 4.1.2 achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;
 - 4.1.3 increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training;
 - 4.1.4 increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;
 - 4.1.5 promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;
 - 4.1.6 empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills; and
 - 4.1.7 promoting access to finance for black economic empowerment.
- 4.2 The objectives of AgriBEE are to facilitate broad-based black economic empowerment in the agricultural sector by implementing initiatives to include Black South Africans at all levels of agricultural activity and enterprises along the entire agricultural value chain by:
- 4.2.1 Promoting equitable access and participation of Black people in the entire agricultural value chain;
 - 4.2.2 De-racialising land and enterprise ownership, control, skilled occupations and management of existing and new agricultural enterprise;
 - 4.2.3 Unlocking the full entrepreneurial skills and potential of Black people in the sector;
 - 4.2.4 Facilitating structural changes in agricultural support systems and development initiatives to assist Black South Africans in owning, establishing, participating in and running agricultural enterprises;
 - 4.2.5 Socially uplifting and restoring the dignity of Black South Africans within the sector;
 - 4.2.6 Increasing the extent to which communities, workers, co-operatives and other collective enterprises own and manage existing and new agricultural enterprises, increasing their access to economic activities, infrastructure and skills training;
 - 4.2.7 Increasing the extent to which Black women, people living with disabilities and youth own and manage existing and new agricultural enterprises, increasing their access to economic activities, infrastructure and skills training

- 4.2.8 Empowering rural and local communities to have access to agricultural economic activities, land, agricultural infrastructure, ownership and skills.

5 INDICATORS OF EMPOWERMENT

These indicators are applicable to all enterprises in the agricultural sector with the exception of agricultural SMME's which will resort under a different dispensation as provided for by the SMME Code of Good Practice.

The indicators of empowerment are structured according to the seven key elements of Broad Based Black Economic Empowerment, as stipulated in the Codes of Good Practice:

- ✦ Ownership
- ✦ Management control
- ✦ Employment equity
- ✦ Skills development
- ✦ Preferential procurement
- ✦ Enterprise development
- ✦ Corporate Social Investment

5.1 Ownership

5.1.1 *General Ownership*

In line with the Strategic Plan for South African Agriculture, the vision of this element is to enhance equitable access to and participation in agricultural opportunities within the total value chain; to de-racialise land and enterprise ownership; and to unlock the full entrepreneurial potential in the sector.

- 5.1.1.1 Historically, the interpretation of ownership in agriculture has been understood to be dependent upon ownership of land. This AgriBEE framework makes a distinction between land and enterprise ownership.
- 5.1.1.2 AgriBEE is fundamental to the long-term growth and competitiveness of the agricultural sector. AgriBEE activities and processes should ultimately lead to the creation of viable and sustainable enterprises in the agricultural sector.
- 5.1.1.3 Stakeholders in the sector will work towards the development and implementation of a diversity of enterprise ownership models in support of AgriBEE.
- 5.1.1.4 All sector stakeholders should endeavour to source sufficient financing in order to ensure the establishment of viable and sustainable enterprises.

Agri-Industry undertakes to:

- 5.1.1.5 Further Black participation in existing and new enterprises through equity interest. This includes share equity schemes and other forms of joint ventures with farm labour and other Black entrepreneurs.
- 5.1.1.6 Bonus and realisation points (ownership, sale of assets, net equity value and voting rights) will be employed to further Black ownership in the agricultural sector.
- 5.1.1.7 Sell agribusiness assets to Black entrepreneurs in qualifying transactions. The qualifying transaction will ultimately result in the creation of sustainable business and/or business opportunities for Black entrepreneurs and in the transfer of specialized skills and/or productive capacity to Black entrepreneurs.

Government undertakes to:

- 5.1.1.8 Implement all legislative and other measures available to it to facilitate ownership.

5.1.2 *Agricultural Land Ownership**

- 5.1.2.1 It is important to deal efficiently with land reform to ensure rural stability and market certainty. The process of economic empowerment in South African agriculture starts with improved access to land and the vesting of secure tenure rights in people and to areas where these do not exist.
- 5.1.2.2 The target set by government for Land Reform is 30% of commercial agricultural land (i.e. formerly 'White commercial farmland') by 2014, this is also the RDP target set and agreed upon by all stakeholders as far back as 1994.
- 5.1.2.3 Productive and sustainable agricultural use of agricultural land must be ensured in accordance with the relevant agricultural policies and Acts. Studies should be done to provide a substantive scientific basis for the development of land (also refer to the Sustainable Resource Management Act).

Established Farming Enterprises undertake to:

- 5.1.2.4 Sell agricultural land to Black entrepreneurs in market based transactions on a voluntary basis (Ownership).
- 5.1.2.5 In addition to the sale of agricultural land, established industry undertakes to lease agricultural land to Black entrepreneurs in qualifying transactions. The qualifying transaction will ultimately result in the creation of sustainable business and/or business opportunities for Black entrepreneurs and in the transfer of specialized skills and/or productive capacity to Black entrepreneurs (Enterprise Development).
- 5.1.2.6 In addition to the sale and lease of agricultural land, established industry undertakes to make available agricultural land to farm workers (Corporate Social Investment).

Government undertakes to:

- 5.1.2.7 Contribute through its existing programmes to increasing access to and acquisition of agricultural land by Black South Africans;
- 5.1.2.8 Proactively acquiring suitable agricultural land that comes on the market for land redistribution;
- 5.1.2.9 Use agricultural land that reverts to the state through foreclosure of indebted farmers for redistribution through long lease arrangements (e.g. 99 year lease) amongst others;
- 5.1.2.10 Promote sustainable management and use of natural resources.

5.2 Management Control

Agri-Industry undertakes to:

- 5.2.1 Promote participation by Black people in board positions;
- 5.2.2 Promote participation by Black people in executive management;
- 5.2.3 Promote participation of Black women in board and executive management positions.
- 5.2.4 Promote the participation of Black people as Independent Non-executive Board Members to qualify for bonus points.

5.3 Employment Equity

Employment equity and skills development targets should be achieved within the ambit of the Employment Equity and Skills Development Acts.

Agri-Industry undertakes to:

- 5.3.1 Proactively employ Black people in senior, middle and junior managerial positions;

- 5.3.2 Proactively employ Black women in senior, middle and junior managerial positions;
- 5.3.3 Proactively employ people with disabilities with relevant skills and youth to qualify for bonus points.

5.4 Skills Development

Rapid changes in the global environment require that more resources should be mobilised on expanding the existing human capital pool through investing in people, employment equity, skills development and institutional transformation. Commercial viability in agriculture demands sustained productivity and high levels of entrepreneurship, long term commitment, resources and skills. Designated groups such as youth, women and disabled will be targeted under this section.

Government undertakes to:

- 5.4.1 Provide primary education and training. This includes literacy training. The state, in conjunction with the governing bodies of educational institutions and similar structures, must ensure that quality is offered by all primary, secondary and tertiary institutions;
- 5.4.2 Agricultural training at school and agricultural colleges should be aimed at the requirements for the Black economic empowerment agenda for agriculture. A focused, formal agricultural training system that would equip future farmers for farming practice should receive specific attention;
- 5.4.3 Promote agriculture as a career and will in 2005 undertake a review of the effective demand for human resources in the agricultural sector
- 5.4.4 Lead and coordinate a targeted programme in collaboration with education authorities, farmers' organisations and the agricultural private sector to review existing education and training curricula in order to enhance technical, entrepreneurial, and management skills for Black entrants into the sector by 2006;
- 5.4.5 Ensure the inclusion of a substantial number of Black persons from the sector as the nucleus of strategic partners in Government overseas trade missions, technical assistance, study visits and training opportunities.
- 5.4.6 Functional literacy should be promoted and encouraged through ABET programmes.
- 5.4.7 Institute a sector- wide young professional employment and mentoring programme, which targets Black unemployed and underemployed graduates in all disciplines, starting in 2005. Mentorship programmes shall be accredited by the relevant SETA or other agreed authority.

AgriSETA undertakes to:

- 5.4.8 Establish training programmes for farm and enterprise workers in appropriate technical and management skills

Agri-Industry undertakes to:

- 5.4.9 Identify gaps in workers training needs so as to co-operate with- and complement teaching and educational institutions to allow their workers to receive skills and service training,
- 5.4.10 Dedicate resources to provide for experiential training, internships and training infrastructure for prospective agribusiness entrepreneurs, farm managers and farm labour;
- 5.4.11 Ensure maximum use of resources provided by the Skills Levy of the relevant Sector Education and Training Authorities (AgriSETA, Wholesale and Retail SETA, and FoodBev);
- 5.4.12 Support land reform beneficiaries and Black entrepreneurs to create sustainable business through the transfer of specialized skills in qualifying mentorship programmes.

5.5 Preferential Procurement

The success of the commitments for AgriBEE is influenced by the procurement and contractual relationship within the value chain as per BBBEE Act.

Agri-Industry undertake to:

- 5.5.1 Proactively identify and implement targeted procurement strategies and policies to realise AgriBEE objectives;
- 5.5.2 Report annually on all BBBEE procurement spent;
- 5.5.3 Progressively provide, Black people and SMMEs preferred supplier status including the supply of services and goods.

Government undertakes to:

- 5.5.4 Align their procurement practices with AgriBEE when procuring goods and services from the agricultural sector;
- 5.5.5 Provide Black people and SMMEs preferred supplier status including the supply of services and goods;
- 5.5.6 Identify, prioritise and target Black entrepreneurs and companies in awarding tenders and contracts with the public sector.
- 5.5.7 Government utilize all legislative and other measures available to it to influence the attainment of BBBEE objectives.

5.6 Enterprise Development

Support services such as access to finance, infrastructure, information and knowledge systems, are core pillars of sustainable empowerment initiatives.

Agri-Industry undertakes to:

- 5.6.1 Strengthen and accelerate the development of operational and financial capacity of black enterprises;
- 5.6.2 Provide mentoring, access to inputs, credit, infrastructure, markets, technology and extension services;
- 5.6.3 Submit cumulative quantified contributions to enterprise development, expressed as a percentage of average profit before tax, interest and dividend as a criterion for measurement;
- 5.6.4 Lease agricultural land to Black entrepreneurs in qualifying transactions.

Government undertakes to:

- 5.6.5 Ensure the creation of an enabling environment to support agriculture;
- 5.6.6 Continue with the implementation of the Comprehensive Agricultural Support Programme [and other government programmes];
- 5.6.7 Implement MAFISA and other government financing facilities to further enterprise development;
- 5.6.8 Establish Public Private Partnerships to improve service delivery.

5.7 Corporate Social Investment (CSI)

Established Farming Enterprises undertake to:

- 5.7.1 Contribute to social development and industry specific initiatives for example, but not exclusively:
 - 5.7.1.1 Good quality housing, including access to clean water, sanitation and electricity.
 - 5.7.1.2 Recreational facilities as well as running costs in this regard.
 - 5.7.1.3 Health care and related services.
 - 5.7.1.4 Meeting the transport requirements of workers and their dependants, such as transport to clinics and hospitals, transportation of workers' products to the market, etc.

- 5.7.1.5 Implementation of retirement and funeral schemes.
- 5.7.1.6 Invest in and support farm schools.
- 5.7.2 Engage in collective contributions to social development and industry specific initiatives.
- 5.7.3 Make agricultural land available to farm workers.

Established Agribusiness Enterprises undertake to:

- 5.7.4 Contribute to social development and industry specific initiatives for example, but not exclusively:
 - 5.7.4.1 community education facilities; education programmes aimed at promoting the agricultural industry; and bursaries and scholarships to encourage learners to study agricultural sciences.
 - 5.7.4.2 community training programmes aimed at skills development for the unemployed and ABET.
 - 5.7.4.3 development programmes for the youth and other designated groups.
 - 5.7.4.4 programs in conservation projects; community clean-up programs and preservation of the natural environment.
 - 5.7.4.5 job creation programs in the agricultural and agricultural related sector external to the business.
 - 5.7.4.6 development programmes to develop new talent in the arts and culture.
 - 5.7.4.7 community clinics and community health programs.
 - 5.7.4.8 sport development programmes.

6 ADDITIONAL RECOMMENDATIONS BY THE STEERING COMMITTEE

6.1 Implementation

- 6.1.1 Once a consensus on AgriBEE guidelines and sector scorecard has been reached, a preparatory period will be needed to facilitate implementation at all levels (Provincial, Sub Sector and local levels) and to complete and finalise specifications for requirements by all players.
- 6.1.2 Implementation should be phased over two years with 2007 as the first year of compliance when all indicators will be fully measured. 2007 is recommended because it coincides with the next agricultural census year. It will allow measures which are not already captured in the national data to be incorporated. Thus, the year 2005 has to be taken as the bench mark year which indicates where the sector is with regards to each pillar of the scorecard.
- 6.1.3 The ten year scorecard period for AgriBEE therefore runs from 2007 to 2017. The two years between now and 2007 must be taken as innovation period.
- 6.1.4 The Department has commissioned a comprehensive implementation plan which will incorporate a comprehensive communication strategy focussing on rural areas.

6.2 Monitoring, evaluation and reporting

In the framework document monitoring of broad based BEE and codes of good practice is determined in the Broad Based Black Economic Empowerment Act of 2003. The Steering Committee recommends that:

- 6.2.1 Each institution within the sector undertakes to fully disclose and report [within its annual report], progress towards achieving the commitments. The first such annual report will be for the 2005 financial year.

- 6.2.2 Specific areas of reporting shall include all seven elements of the scorecard.
- 6.2.3 Monitoring and evaluation centres be established to focus on measurements, uniformity of measurements and relevant time frames. In the absence of reliable baseline data, measurement indicators need to be agreed on. A process must be set in place to link AgriBEE measurements to census periods in order to capture required measures to census periods in order to capture required measures into national statistics. The Council and AgriBEE unit of the DoA will do the monitoring.
- 6.2.4. AgriBEE Charter council
- (a) Fundamental principles:
- A Council will be established as an independent body with a mandate to oversee the implementation of the charter.
 - The Council will address the issues of principle and, in particular, conduct the reviews and take the decisions. If there is a material change in the circumstances or the environment in which the charter has to be implemented, it will consider whether the targets and implementation strategies are still appropriate, and if not how they should be varied.
- (b) There will be equality between industry association representatives and all others on the Council. The Council must fairly reflect the interests of all representative organizations.
- (c) Decisions of the Council will be taken on a consensual basis. If, on any issue, the Council is unable to achieve consensus, there will be a dispute-breaking mechanism in the Council either by some agreed mechanism within the Council, or by reference to arbitration or mediation.
- 6.2.1 Targets must be reviewed every three years and corrective steps effected during the next census year. The review and corrective measures must be continuous on a 3 year period, 2010, 2013, 2016 linked to census periods over 10 year AgriBEE period.
- 6.2.2 A comprehensive evaluation should be carried out five years later in 2012 and another in 2017.

6.3. Implications for Policy and Programmes

- 6.3.1 Based on the dynamics of two economies within the sector, an integrated approach has to be two pronged through commodity groups/industries and provincial and NGOs/CBOs.
- 6.3.2 Commodity/industry plans and joint implementation plans have been initiated and are being tested. Progress has been slow largely due to complex and unique dynamics within each grouping. An approach has to be adopted to strengthen the process already begun.

7 GLOSSARY

(compiled from 'Draft Codes of Good Practice')

"Acceptable Valuation Standard" means a valuation of an asset, an Economic Interest, an Enterprise or any other instrument or right relevant to measurement under this Statement undertaken in accordance with normal valuation methodologies which represent standard market practice in the context of the nature as well as the stage of development of the asset, Equity Interest or Enterprise being valued;

"the Act" means the Broad-Based Black Economic Empowerment Act 53 of 2003;

"Aged Person Act" means the Aged Persons Act 81 of 1967, as amended;

"Associated Enterprise" means any Enterprise other than the Measured Enterprise with which the Measured Enterprise has concluded a Qualifying Transaction;

"BEE Recognition Level" means the percentage BEE recognition levels;

"BEE Status" means the compliance bands;

"BEE" means black economic empowerment;

"black aged people" means black people who are also aged people as defined in the Aged Persons Act;

"black designated groups" means black workers, black unemployed people, black youth, black aged people, black disabled people and black people living in rural areas;

"black disabled people" means black people who also satisfy all of the criteria in the definition of 'persons with disabilities' set forth in paragraph 5.1 of the "code of good practice on the employment of people with disabilities" (as amended or substituted from time to time) issued in terms of section 54(1)(a) of the Employment Equity Act;

"black new entrants" means a black Participant(s) (which includes without limitation, black Participants in Broad-Based Ownership Schemes) holding in aggregate in excess of 5% of the total Voting Rights and Economic Interest in a Measured Enterprise who has not, prior to their acquisition of their Equity Interest in the Measured Enterprise, concluded similar transactions in respect of any other enterprise, which in aggregate have a cumulative value of R20,000,000.00 measured in accordance with an acceptable Valuation Standard;

"black people" as used in this Statement, bears the same meaning as defined in the Act, provided that it is limited to natural persons who are citizens of the Republic of South Africa by birth or by descent as well as natural persons who acquired citizenship by naturalisation prior to the commence date of the Interim Constitution;

"black unemployed people" means black people who are unemployed, are not attending or required by law to attend an educational institution and who are not awaiting admission to an educational institution;

"black women" means black people who are women;

"black workers" means black people who are also employees as defined in the Employment Equity Act;

"black youth" means black persons who are also youth as defined in the National Youth Commission Act;

"Broad-Based Ownership Scheme" means a juristic person, a trust or a common law association of persons constituted with the view to facilitating the participation of specified natural persons in the benefits flowing from the ownership by that scheme or its fiduciaries of an Equity Interest in an Enterprise(s). In relation to this definition, the following additional definitions of Ownership Scheme are provided:

- ✦ "Distribution Scheme" means a Broad-Based Ownership Scheme whereby a broad base of natural persons (such as a community or a broad-based group of natural persons including, without limitation, black women and black designated groups) are intended to receive distributions from the Scheme payable from Economic Interest received by the scheme or the fiduciaries of the scheme; and
- ✦ "Benefit Scheme" means a Broad-Based Ownership Scheme whereby a broad base of more than 50 natural persons (such as a community or a broad-based group of natural persons including, without limitation, black women and black designated groups) are intended to benefit from Economic Interest received by the scheme or the fiduciaries of the scheme without their actually receiving distributions payable from such Economic Interest

"Close Corporations Act" means the Close Corporations Act 69 of 1984, as amended;

"the Codes" means all Codes of Good Practice issued in terms of section 9 of the Act, including without limitation, this Statement;

"Companies Act" means the Companies Act 61 of 1973, as amended;

"the Constitution" means the Constitution of the Republic of South Africa Act 108 of 1996, as amended;

"Elements" means the measurable quantitative or qualitative elements of BEE compliance specified in this Statement;

"Employment Equity Act" means the Employment Equity Act 55 of 1998, as amended;

"Enterprise" means the person(s) conducting a business, trade or profession in the Republic of South Africa. Unless the context otherwise indicates, Enterprises include, without limitation, a Measured Enterprise and an Associated Enterprise;

“Equity Interest” is the collective term referring to the entitlement of a Participant to receive Economic Interest and to exercise Voting rights in an Enterprise provided that, to the extent that the provisions of paragraphs 9 – 13 provide further definition as to the nature of an Equity Interest in an Enterprise other than a company having share capital, those provisions should be read in conjunction with this definition in relation to such enterprises. Specifically excluded from the definition of Equity Interest is an instrument created as a means to facilitate the repayment by a Participant or an Enterprise of a debt.

“Excluded Equity Interests” means any Equity Interests held by:

- ✦ an organ of state;
- ✦ a provident fund, a pension fund or a retirement annuity fund, as defined in Schedule 2 of Income Tax Act; or
- ✦ a company limited by guarantee which is not a Broad-Based Ownership Scheme;

“Exercisable Voting Right” means a Voting Right of a Participant that is fully exercisable without any limitation upon that right. For the avoidance of doubt, where a black Participant having a Voting Right in a Measured Enterprise or its Associated Enterprise(s) is:

- ✦ not permitted to exercise that Voting Right by reason of some condition or circumstance relating to the terms upon which that Participant’s acquisition of the Equity Interest to which the Voting Rights attach was financed or to the provisions of any agreement concluded between the Participants in the Measured enterprise, then that Participant shall be deemed for the purposes of measurement under this Statement to have no Exercisable voting Rights;
- ✦ prohibited from appointing directors (or similar owner appointed management) to the Enterprise in which he/she enjoys his/her Voting Rights in number, pro rata to his/her entitlement to Voting Rights, then that Participant shall be deemed for the purposes of measurement under this Statement to have no Exercisable voting Rights.

“Income Tax Act” means the Income Tax Act 58 of 1962, as amended;

“Industry Body” means a private sector based Verification Agency industry body which promotes the development and maintenance of high quality and reliable BEE verification services through continuing professional education and training, the recommendation of best practice business process methodologies, the promotion of an industry code of conduct, the implementation of effective industry-wide complaints processing and professional conduct disciplinary mechanisms, continuing engagement on an industry-wide basis around the implementation and ongoing development of the Verification Standards and constructive ongoing interaction with government and which is recognised by the Minister. For the avoidance of doubt, in order for an Industry Body to be recognised by the Minister, it must allow for participation by such persons representing the Minister and the Accreditation Body as the Minister may determine;

“Interim Constitution” means the Constitution of the Republic of South Africa Act 200 of 1993;

“Measured Enterprise” means an Enterprise subject to measurement under this Statement and specifically excludes an Associated enterprise;

“National Youth Commission Act” means the National Youth Commission Act 19 of 1996, as amended;

“Net Equity Value” means the value of the instruments to which a black Participant’s Equity Interest attaches in a Measured Enterprise (including without limitation, the value of Economic Interest received since date of acquisition of the instruments) after deducting the value of any third party rights or claims that may exist against the black participant’s as a result of that transaction (including without limitation, the value of all interest payable in respect of such transactions) measured as a percentage of the total value of the Measured Enterprise, all valuations undertaken in accordance with an Acceptable Valuation Standard;

“Ownership Fulfilment” means in relation to any Economic Interest held by a Participant who is a black person, the complete release of that Participant from any and all third party legal or commercial rights designed to reserve to any person other than that Participant or to withhold, defer or restrict the enjoyment by that Participant of the benefits of that Economic Interest, whether generally, or specifically, or for a fixed period, or until or upon the occurrence of some event provided that such third party rights were created primarily as a means to secure for a lender payment of a loan or similar/equivalent financing arrangement advanced to the Participant for the purpose of acquiring the Equity Interest to which those third party rights attach.

“Participant’s Claim” in the context of this Statement, means any claim to payment that a Participant enjoys in relation to a Measured Enterprise even if that claim is enjoyed through one or more other enterprises;

“Participant” means a natural person having an “Equity Interest in an Enterprise”;

“Qualifying Small Enterprise” means an enterprise which qualifies for measurement under the qualifying small enterprise scorecard, in terms of the definition specified in code 000, statement 001, and may be a medium, small or very small enterprise as defined in the national small business act 102 of 1996, as amended;

“Qualifying Transaction” means a sale of business and/or assets from a Measured Enterprise to an Associated Enterprise. A Qualifying Transaction shall not be included under the Enterprise Development Element of the Generic Scorecard. In addition, in order for such a transaction to be regarded as a Qualifying Transaction, it must comply with the following requirements:

- ✦ the Qualifying Transaction must ultimately result in the creation of sustainable business and/or business opportunities for black people and in the transfer of specialised skills and/or productive capacity to black people; and
- ✦ the Associated Enterprise arising from the Qualifying Transaction must be a fully fledged Enterprise in its own right and, as such, should at a minimum:
 - (i) have no unreasonable limitations imposed upon it in relation to the identify of its clients and/or customers; and
 - (ii) have clients/customers and suppliers other than the enterprise with which the Qualifying Transaction was undertaken; and
 - (iii) have no operational outsourcing arrangements with the initiating enterprise which were not concluded at arms-length on a fair and reasonable basis;

“Realisation Points” means the sum of the Ownership Fulfilment point and the Net Equity Value points as referred to in the ownership scorecard in paragraph 7;

“the Strategy Document” means the document published by the department of trade and industry of the South African government in March 2003 and entitled “South Africa’s Economic Transformation – A Strategy for Broad-Based Black Economic Empowerment” as may be amended or substituted in terms of section 11 of the Act;

“Superior Contributor to BEE” for the purpose of this Statement, is a Level One to Level Four Contributor to BEE as defined in Code 000, Statement 000;

“Target” means the Targets attributed to the various criteria in the ownership scorecard in paragraph 7;

“Target” means the targets attributed to the various Elements in the Generic Scorecard;

“Transitional Period” means the period between the commencement date of this Statement and a date to be gazetted by the Minister as referred to in paragraph 26;

“Trust Property Control Act” means the Trust Property Control Act 57 of 1998, as amended;

“Verification Agency” means a BEE Verification Agency duly accredited in terms of this Statement;

“Verification Certificate” means a BEE certificate issued by a Verification Agency in compliance with the Codes; and

“Verification Standards” means the minimum standards required from Verification Agencies in order for them to be accredited and gazetted by the Minister in terms of section 14 of the Act.

“Voting Right” in relation to a member of the Board, refers to the level of control exercised by that person over the decisions of the Board. The Voting Right in the hands of black people serving on the Board is expressed as the percentage that such votes form of the total number of votes to which all members of that Board are entitled at a meeting of the Board;

“Voting Right” means the votes that a shareholder is entitled to exercise at a general meeting of the shareholders of a company having share capital or similar rights in any other form of enterprise, provided that:

- (a) to the extent that the provisions of paragraphs 9-0 provide further definition as to the nature of Voting Rights in an Enterprise other than a company having share capital, those provisions should be read in conjunction with this definition in relation to such Enterprises;
- (b) where a juristic (person(s) is interposed between an Enterprise and its ultimate Participants, the entitlement to Voting Rights is determined by application to the principles set forth in paragraphs 8(2) and 8(5); and
- (c) Voting Rights exercised on behalf of a Participant by other natural person who acts in a fiduciary capacity or in terms of a specific mandate or proxy, shall be deemed to be exercised by that Participant;

8 DRAFT LARGE-SCALE AgriBEE SCORECARD

BEE Element	Weighting	Indicator	Indicator weighting	Target and comment
Ownership	20 %	Exercisable Voting Rights by black people	3 %	25 %
		Exercisable Voting Rights by black women	2 %	10 %
		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 in the Enterprise to which black designated groups are entitled	1 %	3 %
		Ownership Fulfilment	1 %	No Restrictions
		Net Economic Interest	7 %	20 % of the Target (Year 1-2) 50 % of the Target (Year 3-5) 75 % of the Target (Year 6-8) 100 % of the Target (Year 9-10)
		Ownership by Broad-Based BEE Schemes or New Entrants (Bonus)	3 %	Bonus per each level of five percent
		Contribution to achieving 30 % land transfer	5 %	Bonus point per each percentage of land transferred above 25 % (max 5)
Management Control	10 %	Exercisable voting rights by black people	3 %	50 %
		Members of the Board who are black people	1 %	50 %
		Black independent director representation (Bonus)	1 %	40 %
		Members of the Board who are black women	1 %	25 %
		Black senior executive representation	2 %	40 %
		Black women senior executive representation	1 %	20 %
		Black other executive representation	1 %	40 %
		Black women representation as other executives	1 %	20 %

The 25 % target is applicable to individual members of the established industry; however, the 30 % target is a national target by Government

Note: The drafting team carefully assessed the Code of Good Practice (COGP) directives regarding scorecard weightings and targets; inputs from public commentary; and the AgriBEE Framework and recommends that the prescribed COGP Model Scorecard format be utilised in its entirety with minor clarifying or additional indicators to deal with specificities.

BEE Element	Weighting	Indicator	Indicator weighting	Target and comment	
Employment Equity (EE)	10 %	Weighted Employment Equity statistics across all job levels	12 %	50 %	COGP: Bonus points will be awarded for the employment of black disabled people
		Weighted black women representation across all job levels	8 %	50 %	
Skills Development ¹	20 %	Investment in Skills Development (including the skills development levy), as a percentage of pay-roll. 50% to be spent on literacy and numeracy until a level of 80% is reached.	10 %	3 %	Section includes mentorship programmes for farm labour and black agricultural entrepreneurs
		People employed through learnerships and internships (as a percentage of total employees)	10 %	3 %	
		Support land reform beneficiaries and Black entrepreneurs to create sustainable business through the transfer of specialized skills in qualifying mentorship programmes	5 %	Qualifying mentorship programmes as accredited by relevant SETA authority	
Preferential Procurement ²	20 %	Level 1 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R1.35 for every R1 spent).	20 %	50 %	
		Level 2 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R1.25 for every R1 spent).			
		Level 3 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R1.10 for every R1 spent).			
		Level 4 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R1.00 for every R1 spent).			
		Level 5 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R0.80 for every R1 spent).			
		Level 6 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R0.60 for every R1 spent).			
		Level 7 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R0.50 for every R1 spent).			
		Level 8 Contributor, as verified by BEE verification agencies instituted under Statement 020 (Recognition of R0.10 for every R1 spent).			
Enterprise Development	10 %	Cumulative quantified contribution to enterprise development over the previous five years over average profit before tax, interest and dividend over the previous five years or 20 % of land or capital assets leased to black people	10 %	1 % Year 1 and 2 2 % Year 3 and 4 3 % Year 5 and 6 4 % Year 7 and 8 5 % Year 9 and 10	
		Lease of land or capital assets on a long term basis	3 %	Lease longer than 5 years	

BEE Element	Weighting	Indicator	Indicator weighting	Target and comment
Residual Element	10 %	Cumulative quantified contribution to social development and industry specific initiatives over the previous five years over average profit before tax, interest and dividend over the previous five years or 10 % of land made available to farm workers.	10 %	1 % Year 1 and 2 2 % Year 3 and 4 3 % Year 5 and 6 4 % Year 7 and 8 5 % Year 9 and 10

¹ COGP: The following contributions will be considered for bonus points and enhanced recognition:

1. Mentorships, internships and learnerships
2. Development of core and critical skills
3. ABET
4. Retention of learners
5. Development of scarce skills in terms of the National Skills Development Strategy
6. Skills development in rural areas

² COGP: The following areas to be considered:

1. Recognition level of Qualifying Small Enterprises (preference through Qualifying Small Enterprise Scorecard)
2. Exempted Micro Enterprises (recognition through Qualifying Small Enterprise Scorecard)
3. Exempted Micro Enterprises (automatic recognition)
4. Enhanced recognition for the creation of domestic productive capacity
5. Linkage to enterprise development

* *Endnote on Agricultural Land*

- To deal effectively with land reform, it is important that all avenues of land access such as restitution, redistribution and tenure reform be given adequate attention.
- Demand for land must be well defined and role-players should have access to a common database of relevant information on land reform.
- The market mechanism principle i.e. the willing buyer, willing seller approach will be the basis of land reform.
- Land reform is not solely a public responsibility - the private sector also has a role to play in this regard.
- Any target in respect of land reform is subject to available funding to conclude empowerment transactions.
- The state should budget adequately for land reform and assist candidates with merit to acquire land within the market mechanism.
- Private sector and donor funds must be mobilised for purposes of land reform, while the government and organised agriculture assume joint responsibility to facilitate access to such funding.
- Individual farmers cannot be compelled to meet land targets. Only individual farmers themselves can enter into undertakings of this nature.
- Programmes must make it possible and attractive for landowners to acquire land jointly with their workers or others for empowerment purposes or to operate their businesses or part thereof on a shareholding basis.
- Co-operative forums between government, organised agriculture, local government and agribusiness must be established at different levels to help facilitate land reform and farmer development.