



**THE CONSTITUTION OF
THE BROAD-BASED BLACK ECONOMIC
EMPOWERMENT (B-BBEE) INFORMATION
COMMUNICATIONS TECHNOLOGY (ICT) SECTOR
COUNCIL**

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CONSTITUTION OF B-BBEE ICT SECTOR COUNCIL

1. PREAMBLE

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

AND WHEREAS despite significant progress since the establishment of a democratic government in 1994, South African Society, including the ICT Sector, remains characterized by racially based income and social services inequality;

AND WHEREAS the B-BBEE Act 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 WHEREAS in order to address certain inequalities in the ICT Sector which comprises of: the Electronics, Information Technology, Telecommunications, Broadcasting sub-sectors, together with participants from the social partners namely: Government, Labour, Community, NEDLAC and ICASA as stakeholders;

NOW THEREFORE, the parties hereto, have resolved to form a B-BBEE ICT Sector Council in order to implement and monitor the B-BBEE ICT Sector Code.

2. INTERPRETATION

For the purpose of this Constitution, unless the context indicates a contrary intention, the following words and phrases shall have the following respective meanings:

- 2.1 Amended B-BBEE Codes of Good Practice – B-BBEE Codes of Good Practice as amended from time to time.
- 2.2 “Black people”- as defined in the B-BBEE Act and the B-BBEE Codes of Good Practice as amended from time to time.
- 2.3 B-BBEE Act – Broad Based Black Economic Empowerment Act No. 53 of 2003 as amended from time to time.
- 2.4 “ICT Sector Code”- the ICT Sector Code, published on 6 June 2012 in gazette number 35423 as amended from time to time.
- 2.5 “the Council” – the ICT Sector Council created in terms of B-BBEE Codes of Good Practice as amended from time to time.
- 2.6 “Constitution”- this constitution and any amendments thereto.
- 2.7 “CSIR”- Council for Scientific and Industrial Research.
- 2.8 “Dispute” - Dispute as provided for in clause 26 of this Constitution.
- 2.9 “DOC” - Department of Communications.
- 2.10 “DTI”- Department of Trade and Industry.
- 2.11 “DTPS”- Department of Telecommunications and Postal Services.
- 2.12 “ICASA”- Independent Communications Authority of South Africa.
- 2.13 “ICT Sector” - the Electronics, Information Technology, Telecommunications, and Broadcasting sub-sectors listed in the ICT Sector Codes.
- 2.14 “Line Minister”- Minister of Telecommunications and Postal Services.
- 2.15 “NEDLAC – National Economic Development and Labour Council, a statutory body established in terms of the National Economic Development and Labour Council Act, 1994.
- 2.16 “NGO”- Non Government Organization.
- 2.17 “RSA”- the Republic of South Africa.

2.18 “USAASA” – Universal Service and Access Agency of South Africa.

3. ESTABLISHMENT OF THE B-BBEE ICT SECTOR COUNCIL

By signing this Constitution the signatories create the Council, which shall come into effect on the date on which it is signed by the last party signing.

The Council is established in terms of section 9 (1) of the B-BBEE Act of 2003 as amended from time to time, with a mandate to oversee and monitor the implementation of the ICT Sector Code.

4. NAME OF THE COUNCIL

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

5. VALIDITY OF ACTS

As from the time of the adoption of this Constitution, the affairs of the B-BBEE ICT Sector Council shall be governed by the terms of this Constitution. Any resolution passed and any act performed in terms of such resolutions prior to the coming into effect of this Constitution shall remain valid and of full force and effect.

6. LEGAL PERSONALITY

6.1 The Council is a body corporate with perpetual succession, capable of acquiring rights, incurring obligations and entering into legal transactions, and of suing and being sued, in its own name.

6.2 The Council shall be capable of performing such acts as are necessary for or incidental to the achievement of its objectives, the exercise of its powers, and the performance of its functions and duties under this Constitution.

6.3 The Council shall have an identity and existence distinct from its members or office-bearers. Such identity and existence shall continue, notwithstanding changes in the composition of its membership or office-bearers.

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

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

7.1.1. Oversee the implementation and monitoring of the Sector Code;

7.1.2. Provide guidance on matters relating to black economic empowerment in the ICT sector;

7.1.3. Compile reports on the status of black economic empowerment in the ICT sector;

7.1.4. Share information with approved accreditation agencies conducting black economic empowerment ratings in the ICT sector; engage and advise, the sector Ministers, ICASA and other relevant regulatory entities regarding implementation of the ICT Sector Code;

7.1.5. Develop mechanisms and strategies to monitor compliance with the ICT Sector Code;

7.1.6. Develop strategies for consultation with provincial and local stakeholders regarding the ICT Sector Code;

7.1.7. Formulate guidelines and models for broad-based empowerment of Black owned companies at local, provincial and national level;

7.1.8. Develop and implement an interactive portal to communicate the basic methods of applying the B-BBEE scorecard for all the different elements of B-BBEE;

7.1.9. Develop baseline indicators, conducting or commissioning research for the purposes of ensuring the effective implementation of the ICT Sector Code;

7.1.10. Report to Government and the B-BBEE Advisory Council on the implementation of the ICT Sector Code;

7.1.11. Advise on the amendments of the ICT Sector Code and other pieces of legislation that hamper effective and efficient implementation of the transformation agenda.

8. THE FUNCTIONS OF THE COUNCIL

The main responsibility of Council is to develop and monitor implementation of the sector code including but not limited to:-

- 8.1. be the custodian of the B-BBEE ICT Sector Code;
- 8.2. advise the organs of state on all matters relating to B-BBEE in the ICT sector;
- 8.3. monitor and review the implementation of the ICT Sector Code and all matters related thereto in the ICT sector;
- 8.4. be responsible for the development and fostering of common standards and code of ethics in the implementation of ICT Sector Code in the industry and compliance with B-BBEE legislation and Codes of Good Practice;
- 8.5. establish a Secretariat team, with a business plan and adequate resources, to attend to its routine work and especially to:
 - 8.5.1. issue guidance notes on the interpretation and application of the ICT Sector Code;
 - 8.5.2. prepare an annual review which outlines progress and evaluates new areas of intervention;
 - 8.5.3. submit the annual review to the ICT Sector Council for publication;
 - 8.5.4. undertake the reviews identified in terms of the ICT Sector Code;
 - 8.5.5. engage with government, the public sector, the B-BBEE Advisory Council and other regulatory agencies to promote the implementation of the ICT Sector Code; and
 - 8.5.6. assess, evaluate and commission research on specific areas where such research is not available;
- 8.6. be responsible for the accreditation of the national ICT projects aimed at “bridging the digital divide” in conjunction with the existing bodies such as the USAASA,

the Digital Divide Partnership, ICASA, the CSIR, trade unions, NGOs and other organs of civil society;

- 8.7. facilitate the co-ordination of extra–industry programs and/or initiatives where there exist clearly defined projects of mutual collaboration or co-operation;
- 8.8. provide guidance on sector-specific matters affecting B-BBEE in entities in the sector;
- 8.9. compile reports on the status of B-BBEE within the sector;
- 8.10. oversee, supervise and promote adherence to the Sector Code in the interest of the public;
- 8.11. strengthen and foster collaboration between the public and private sector in order to promote and safeguard the objectives of the Sector Code;
- 8.12. receive complaints relating to the implementation of the Sector Code and refer such complaints to relevant bodies including but not limited to the Line Minister, BEE Commission, Department of Trade and Industry, National Prosecution Authority and Treasury;
- 8.13. maintain a registry of major broad-based economic empowerment transactions in the sector;
- 8.14. receive and analyse reports as may be prescribed concerning compliance to the ICT Sector Code by organs of state, public entities and private sector enterprises;
- 8.15. promote good governance and accountability by creating an effective and efficient environment to promote and implement broad-based economic empowerment;
- 8.16. promote public awareness of the ICT Sector Code by:
 - 8.16.1. issuing binding and non-binding explanatory notices on implementation and interpretation;
 - 8.16.2. conducting research relating to its mandate and activities and, from time to time, publishing the results of that research;
 - 8.16.3. liaising with any regulatory authority on matters of common interest and, without limiting the generality of the foregoing may:

- 8.16.3.1. exchange information with and receive information from any such regulatory authority pertaining either to matters of common interest or to specific complaint or investigation;
- 8.16.3.2. participate in proceedings of any regulatory authority;
- 8.16.3.3. advise or receive advice from any regulatory authority;
- 8.17. engage the services of any person, body or entity with appropriate knowledge and experience to assist the Council to carry out its functions;
- 8.18. perform any request relating to B-BBEE as delegated by the Line Ministry when and if necessary to do so.

9. THE COMPOSITION OF THE COUNCIL

- 9.1 The Council shall consist of no less than fourteen (14) Members and no more than sixteen (16) Members.
- 9.2 The Members shall be appointed by the Line Minister who has jurisdiction over the ICT Sector.
- 9.3 When appointing Members in terms of the above, regard shall be given to the need for the Council:-
 - 9.3.1 To have appropriate expertise;
 - 9.3.2 To represent different relevant constituencies including trade unions, business, community organizations, etc.
- 9.4 The composition of the Council shall consist of the following Members:
 - 9.4.1 Two (2) Members each from the four ICT sub-sectors namely, the Broadcasting, Electronics, Information Technology and Telecommunications sub-sectors;
 - 9.4.2 Two (2) Members from relevant Government Departments that interface with the ICT sector;
 - 9.4.3 Two (2) Members from Organized Labour Federation or Trade Unions;
 - 9.4.4 One (1) Member from NEDLAC Community constituency;
 - 9.4.5 One (1) Member from ICASA;

- 9.4.6 Two (2) Members from women and/or youth and the disabled groups participating in the ICT sector.
- 9.5 The appointed Council, shall in consultation with the Line Minister, determine the model that will ensure execution of the administrative functions of the Council, as well as the model for funding such functions.
- 9.6 The Members of the Council shall be remunerated in accordance with Treasury Regulations.

10. APPOINTMENT, RESIGNATION, TERMINATION AND SUSPENSION

- 10.1 For a Member to be appointed he/she must possess suitable qualifications, expertise and knowledge of the principles of B-BBEE and of the ICT Sector.
- 10.2 The term of office of the Members of Council shall be four (4) years from the date of appointment with an option of renewal for another term.
- 10.3 A Member of Council may resign at any time by delivering written notice to that effect to the Line Minister, with a copy to Council.
- 10.4 A new Member shall be appointed to the Council through the same process by which the initial Council Members were appointed.

11 POWERS OF THE COUNCIL

- 11.1 The Council shall have all the powers necessary to enable it to carry out its objectives, objects and matters incidental thereto. Without limiting the generality of this provision the Council shall have the powers in particular :-
- 11.1.1 to oversee the implementation of the Sector Code;
- 11.1.2 to establish permanent sub-committees and any other sub-committees to deal with specific matters as and when required; and
- 11.1.3 to invest and deal with any of its monies or other property, including investments on such terms and conditions as the Council deems fit;
- 11.1.4 to purchase or otherwise acquire property, (including fixed, movable and intellectual property) necessary and required for the execution of its functions;

- 11.1.5 to engage the services of professional advisers, service providers and/or experts on agreed terms of engagement;
- 11.1.6 to institute, conduct and defend legal proceedings;
- 11.1.7 to delegate any of its powers and functions to a sub-committee, a member and or office-bearer of the Council, provided that the Council shall not be divested of such powers or functions;
- 11.1.8 to determine, regulate and administer its financial affairs which shall include the authority to determine its financial policies, determine an annual budget, open and manage banking and investments accounts, determine its signatories and borrow money for its operations;
- 11.1.9 to sell, exchange or lease any of its assets and to hire premises or assets in such manner and on such terms and conditions as the Council deems fit;
- 11.1.10 to determine the visual identity of the Council, such as a logo, emblem or other identifying mark;
- 11.1.11 to do everything else which is incidental to or conducive to the attainment of its objects or any purpose specified in this Constitution.

12 REPORTING OF COUNCIL

- 12.1 The Council shall share its reports with stakeholders in the sector, approved accredited agencies, the B-BBEE Commission, B-BBEE Presidential Advisory Council, the Line Ministry, the Minister of Communications and the Minister of Trade and Industry. Such reports shall include:
 - 12.1.1 progress made by the ICT Sector on broad-based Black economic empowerment;
 - 12.1.2 compliance to broad-based Black economic empowerment in line with the ICT Sector Code based on B-BBEE certificates of the Measured Entities in the sector.

13 CHAIRPERSON

- 13.1 The Council shall, from amongst its Members, elect a Chairperson and Deputy Chairperson.
- 13.2 The Chairperson or the Deputy shall not have a second or casting vote in addition to their deliberative vote.

14 SECRETARIAT

- 14.1 The Council will appoint a Secretariat, who shall be full time employee/s of the Council and will be responsible for the administrative functions of the Council and the day to day running of the Council.
- 14.2 The Council will delegate to the Secretariat authority to execute its responsibilities.
- 14.3 The Secretariat shall at all times act in accordance with the directives of the Council and its sub-committees.

15 DISQUALIFICATION OF MEMBERS OF COUNCIL

- 15.1 A person may not be appointed or continue as a Council Member if such person:
 - 15.1.1 has at any time been removed from an office of trust on account of misconduct;
or
 - 15.1.2 has been found guilty in terms of prevention of corruption legislation, or
 - 15.1.3 has been declared an un-rehabilitated insolvent person; or
 - 15.1.4 has been declared by a competent court to be mentally unfit; or
 - 15.1.5 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
 - 15.1.6 misses three (3) consecutive meetings without an apology.

16 GOVERNING PRINCIPLE

The Council shall be guided by the following basic principles: -

- 16.1 Independence;
- 16.2 Transparency;
- 16.3 Fairness;
- 16.4 Good Corporate Governance;
- 16.5 Equitable Socio-economic Transformation.

17 ANNUAL REPORTS

- 17.1 The Council shall submit annual reports through its Secretariat to the Line Ministry, **the dti** and the B-BBEE Advisory Council.
- 17.2 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 by the Secretariat before the Council and thereafter tabled before the Annual General Meeting.
- 17.3 The Line Minister shall table a copy of such annual report in Parliament for noting.
- 17.4 The annual report of the Council shall include the following:
 - 17.4.1 Report on the work of the Council including its meetings held in terms of its Constitution.
 - 17.4.2 Programmes and activities as determined and adopted by the Council.
 - 17.4.3 Report on the initiatives undertaken by enterprises within the Sector;
 - 17.4.4 Provide any relevant information which would be useful in assessing the state of B-BBEE in the ICT Sector; and
 - 17.4.5 Audited financial report by an independent qualified and admitted auditor.

18 CONFLICT OF INTEREST

- 18.1 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.
- 18.2 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.

19 THE CONSTITUTION OF THE COUNCIL, CODE OF ETHICS AND CODE OF CONDUCT

- 19.1 The Council shall draft and adopt its Constitution, Code of Ethics and Code of Conduct.
- 19.2 The Constitution for the Council must be formulated within 60 working days of the Council being established.
- 19.3 The Constitution of the Council may be amended from time to time after consultation with the Council Members.
- 19.4 The Council may, by resolution, formulate rules to further regulate its proceedings.
- 19.5 Members shall subscribe to the Constitution of the Council, Code of Ethics and Code of Conduct.
- 19.6 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 in all cases where the legal provisions of these instruments are breached.

19.7 The Chairperson of the Council, or any Member that she/he delegates to, has authority to communicate all official Council business and/or to represent the Council. The Code of Conduct shall have provisions relating to how other Members of Council may communicate or conduct themselves.

20 MEETINGS OF COUNCIL

20.1 The Council shall have at least one meeting per quarter.

20.2 A quorum for meetings shall be 50% plus one (1) of Council Members, present in person, electronically, or by proxy.

20.3 Any member of the Council that is unable to attend any scheduled meeting in person or electronically may provide a proxy, in an approved manner, to another Council member.

20.4 All Members of Council shall have the right to vote at meetings.

20.5 The Council shall keep and maintain proper records reflecting decisions taken by the Council and the minutes of Council meetings.

20.6 The Chairperson of the Council may call a Special Council Meeting at any time for a specific purpose, provided that at least seven (7) days' notice of any Special Council Meeting is given.

20.6 There shall be an Annual General Meeting, 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.

20.7 A final decision of the Council shall be made by a simple majority of the Members of the Council at a meeting.

20.8 Amendments to this Constitution shall require a two thirds majority of the Council.

21 FUNDING OF THE COUNCIL

- 21.1 The Line Ministry shall fund the initial costs of setting up the Council for a period not longer than two years following its establishment.
- 21.2 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.
- 21.3 The Council will determine a business model for its funding.
- 21.4 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.

22 RECRUITMENT AND REMUNERATION OF THE SECRETARIAT

- 22.1 The Council shall establish the Secretariat headed by the Chief Executive Officer.
- 22.2 The Secretariat of the Council shall report to the Council through the Chairperson.
- 22.3 The Secretariat shall perform strategic, operational, secretariat support functions and any other functions as determined by the Council.

23 ASSOCIATION NOT FOR GAIN

- 23. 1 The Council is not established for the purpose of gain and accordingly its income and assets, however derived, shall be applied only towards the promotion of its objectives and no part of its income and assets may be paid or transferred in any circumstances to any of its Members except to pay for out-of-pocket expenses in carrying out its duties and reasonable remuneration as provided for in clause 9.6 above;

- 23.1 The Council may not pay any of its Members, or any of its committees, any remuneration or give that Member any benefit of any nature for any services rendered by him or her to the Council; provided this provision shall not prevent;-
- 23.1.1 The Council approving, if it considers it appropriate, the payment to a Member of the Council or of any committee of the Council out-of-pocket expenses incurred on behalf of the Council and which out-of-pocket expenses are authorized or approved by the Council or any committee of the Council;
- 23.1.2 The payment of reasonable remuneration to any person bona fide in the employ of the Council;
- 23.1.3 The payment of reasonable fees to any bona fide service provider appointed by the Council or through a valid delegated authority.

24 LIMITATIONS OF LIABILITY

No Member shall have any liability for any commitments undertaken by the Council or its office bearers. All persons shall be deemed to contract or deal with the Council on this basis.

25 INDEMNITIES

Every Member of the Council or of any committee of the Council, and every officer and employee of the Council, shall be indemnified by the Council against claims made against that person and any losses and expenses incurred by that person in or about the execution of his or her duties, save for claims, losses or expenses arising from fraud or willful default.

26 DISPUTE RESOLUTION

- 26.1 Any dispute which arises in relation to:
- 26.1.1 the application of; or
- 26.1.2 the interpretation of;

- 26.1.3 the carrying into effect of;
- 26.1.4 any party's rights or obligations arising from this Constitution or ICT Sector Code or any reports drawn in accordance therewith must be determined in accordance with the provisions hereunder.
- 26.2 The dispute referral must be:
- 26.2 (a) in writing;
- 26.2 (b) addressed to the head of the Secretariat;
- 26.2 (c) adequately describe the dispute; and
- 26.2 (d) delivered to every other party to the dispute by the party referring the dispute.
- 26.3 The head of the Secretariat must, within 14 business days after receipt of the referral, refer the dispute to the Council through the Chairperson of the Council. The Council must, as soon as possible, endeavour to resolve the dispute within a period of 30 days of the referral.
- 26.4 If the Council fails to resolve the dispute within 30 days of its referral, any party to the dispute may refer it for mediation by a mediator appointed by the Line Minister.
- 26.5 Should the mediator fail to resolve the dispute within a further period of 14 days, then any party to the dispute may refer it for arbitration by an arbitrator agreed to by the parties.
- 26.6 Should the parties fail to agree on an arbitrator within 3 (three) days after the arbitration has been demanded, the arbitrator shall be nominated, at the request of either of the parties, by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng). If that person fails or refuses to make the nomination, either party may approach the High Court of

South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

26.7 The arbitration shall be subject to the arbitration rules of the Arbitration Act, No 42 of 1965.

26.8 The arbitrator shall have the fullest and freest discretion with regard to the proceedings save that he shall endeavour to conclude the arbitration within 14 days, and he shall be obliged to give his award in writing, fully supported by reasons. His award shall be final and binding on the Parties to the dispute.

26.9 The head of the Secretariat must provide a copy of the award to every party to the dispute.

26.10 The costs of the arbitration must be borne equally by the parties to the dispute, but the arbitrator may take a different and make an appropriate awarding of costs, if -

26.10.1 a party to the dispute, without reasonable cause, refuses or fails to attend the arbitration proceedings; or

26.10.2 the arbitrator finds that a party pursuing or resisting the dispute did so vexatiously or frivolously, or had no reasonable prospect of succeeding.

27 AMENDMENT OF THE CONSTITUTION

This Constitution may from time to time be amended by the Council at a special meeting of the Council, of which the requisite notice has been given, with full particulars of the proposed amendments.

28 DECLARATION OF CONFIDENTIALITY, IMPARTIALITY AND INTEREST

The Council accepts that all declared confidential information, documentation and decisions regarding any matters serving before it is confidential and therefore undertake not to disclose such information unless it is required by law to disclose such information.

29 DISSOLUTION AND WINDING UP

- 29.1 The Council may, upon its dissolution, convene a Special General Meeting for the purpose of discussing its winding up.
- 29.2 Members shall not have any claim in respect of any surplus which may arise on the winding up of the Council.
- 29.3 Upon a resolution to wind up the Council the Council shall appoint a liquidator or liquidators and may give such directions as to the method of winding up as the Council thinks fit.
- 29.4 Any funds or assets of the Council remaining after the payment of the debts and expenses and the cost of winding up shall be distributed to or amongst such associations, non-profit bodies or institutions with similar objectives as the Council shall have decided; provided that such monies or assets shall not be paid to or distributed amongst the Members of the Council.

30 ADOPTION AND COMING INTO EFFECT

This Constitution shall be adopted and shall come into effect on the date that it is adopted by the Council in a Special General Meeting and signed by the Chairperson of the Council.