

TERMS OF REFERENCE OF THE ICT SECTOR CODE COUNCIL

1. PREAMBLE

Recognizing 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

Considering that the BBBEE 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

Acknowledging that in order to address certain inequalities in the ICT sector, industry associations, NEDLAC and the DoC as stakeholders signed and adopted the ICT Sector Charter.

Taking into consideration that the two objects of the Electronic Communications Act of 2005 is to promote the empowerment of historical disadvantaged persons, including Black people, with particular to women, youth and people with disabilities; and to promote SMMEs in the ICT sector.

Now, therefore there is a need to monitor the signed and adopted ICT Sector Code in order to be implemented effectively and efficiently.

2. THE PURPOSE OF THE ESTABLISHMENT OF THE ICT SECTOR CODE COUNCIL

2.1. An ICT Sector Code Council shall be established to oversee or monitor the implementation of the ICT BEE Sector Code by the ICT sector including, but not exclusively the following functions:

- 2.1.1. provision of guidance on matters affecting BEE in the ICT sector;
- 2.1.2. compilation of reports on the status of broad-based BEE in the ICT sector;
- 2.1.3. sharing of information with approved accreditation agencies relevant to BEE in

- the ICT sector;
- 2.1.4. as and when in its opinion the circumstances so require, appoint a committee of experts, with a view to assist the Council in the exercise and performance of its powers, functions and duties;
 - 2.1.5. engage and advise ICASA and other relevant regulatory entities in the ICT sector on the ICT BEE Code of Good Practice;
 - 2.1.6. developing mechanisms and strategies to monitor compliance with the ICT Charter and ICT Code of Good Practice;
 - 2.1.7. developing a strategy for consultation with provincial and local stakeholders;
 - 2.1.8. formulating guidelines for the allocation of procurement opportunities for provincial and local BEE companies in the various regions;
 - 2.1.9. developing a practical manual, with examples, as well as implementing an interactive portal to communicate the basic methods of applying the BEE scorecard;
 - 2.1.10. conducting or commissioning research for the purposes of ensuring the effective implementation of the ICT Charter and the Code of Good Practice;
 - 2.1.11. reporting to Government and the BEE Advisory Council on the implementation of the ICT Charter and Code of Good Practice for the ICT sector;
 - 2.1.12. shall have the final word regarding all on membership applications, suspensions and terminations;
 - 2.1.13. advising on the amendments of the ICT Sector Code; and
 - 2.1.14. the Council shall be subjected to the Public Finance Management Act of 1999.

3. NAME OF THE COUNCIL

The name of the Council shall be called the ICT Sector Code Council.

4. NATURE OF THE COUNCIL

- 4.1. It shall be a legal body with perpetual succession, independent of its councilors of the ICT Sector Code Council, capable of entering into contractual and other incidental matters, and liable for its debts and assets.

- 4.2. The Council shall not be formed for the personal gain of any individual or shall be carried on for non-profit purposes.
- 4.3. It shall be accountable through its Chairperson of the Council.

5. THE COUNCIL

- 5.1. The size of the ICT Sector Code Council shall consists of nine (9) members.
- 5.2. The members shall be appointed by the Minister of Communications.
- 5.3. The Minister will appoint an Executive Officer of the Council, who shall be a full time employee of the Council and shall be responsible for the daily administrative functions of the Council.
- 5.4. The appointment of the members of the Council shall be drawn from a range of relevant stakeholders including, but not excluding, representative of the following:
 - 5.4.1. Recognized ICT Industry Associations;
 - 5.4.2. NEDLAC;
 - 5.4.3. ICASA;
 - 5.4.4. Government of RSA represented by the DoC
- 5.5. For the members to be appointed must possess suitable qualification, expertise and knowledge of the principles of BEE or knowledge of ICT Sector.
- 5.6. The term of the office of the councilors shall be five (5) years term with an option of renewal.
- 5.7. The Council may be suspended or discharged as a Councilor by the Minister of Communications.
- 5.8. Once the Councilor has been suspended or discharged, other Councilors shall be informed in writing.
- 5.9. The Council shall resign as Councilor by giving a written notice of one (1) calendar month to the Minister of Communications.

6. DISQUALIFICATION OF COUNCILORS

- 6.1. A person may not be appointed or continue as a Council `member if such a person:
 - 6.1.1. Is not a citizen of the Republic;
 - 6.1.2. Is not permanently resident in the Republic,

- 6.1.3. is an unrehabilitated insolvent; or
- 6.1.4. has been declared by a court to be mentally ill or; or
- 6.1.5. has at anytime been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, of 1958, the Corruption Act of 1992 or any other offence involving dishonesty;
- 6.1.6. has been sentenced, after the commencement of the Constitution of the Republic of South Africa, Act of 1993, to a period of imprisonment of not less than one year without the option of a fine;
- 6.1.7. A person who is subject to a disqualification contemplated in clause 6.1.2 to 6.1.4 may be nominated for appointment as a Councilor, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.

7. MEMBERSHIP

- 7.1. Members shall apply for membership by submitting their applications to the Council.
- 7.2. An application for membership shall be limited only to the recognized ICT Industry Associations and an application for membership by the individual juristic person shall not be considered.
- 7.3. The applicants shall be required to pay on annual basis the recommended membership fees by the Council in order to qualify for membership.
- 7.4. The Council shall make a final word regarding all membership applications, suspensions and terminations.
- 7.5. Once the membership has been suspended or terminated by the Council, other members shall be informed in writing with immediate effect.
- 7.6. Any member is intending to resign as a member, any amount of money paid by such member to the Council shall be forfeited to the Council.
- 7.7. No suspended or terminated member shall be compensated for his or her contributions to the Council.
- 7.8. The member shall only resign from the Council by giving a written notice of one (1) calendar month to the Council.

8. GOVERNING PRINCIPLES

- 8.1. The Council shall be guided by the following basic principles:-
- 8.1.1. Independence;
 - 8.1.2. Transparency;
 - 8.1.3. Fairness;
 - 8.1.4. Good Corporate Governance;
 - 8.1.5. Consultation and Inclusivity; and,
 - 8.1.6. Equitable Socio-economic Transformation.

9. ANNUAL REPORTS

- 9.1. The Council shall submit annual reports through its Executive Officer to the Ministry of Communications and BEE Advisory Council.
- 9.2. Before the Executive Officer submit annual reports of the Council to the Ministry of Communications and BEE Advisory Council, such report will be tabled by the Chief Executive Officer before the Council and thereafter tabled before the Annual General Meeting which shall consist of the recognized members.
- 9.3. Membership fees increment shall be recommended by the Council and subject to annual approval by the Annual General Meeting.
- 9.4. The Minister shall table a copy of such annual report in Parliament within 30 days after it is received by him or her if Parliament is then ordinary session or, if Parliament is not then in ordinary session, within 30 days after the commencement of its next ordinary session.
- 9.5. The annual report of the Council shall include, but not excluding the following:
- 9.5.1. baseline indicators for all the different elements of broad-based BEE;
 - 9.5.2. aggregate scores of all indicators of the BEE Scorecard for all enterprises under its jurisdiction;
 - 9.5.3. initiatives undertaken by enterprises within the sector;
 - 9.5.4. other relevant information which would be useful in assessing the state of broad-based BEE in the ICT sector; and
 - 9.5.5. audited financial report by the independent qualified and admitted auditor.

10. CONFLICT OF INTERESTS

- 10.1. Should a Councilor has a personal or financial interest in any proposed or discussed matter or meeting by the Council, such Councilor shall immediately disclose fully 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 fair, unbiased and proper manner.
- 10.2. Once the Councilor failed to declare his/her interest in the matter or decision taken by the Council, such decision of the Council will be null and void and such Councilor must be punished.

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

- 11.1. The Council shall draft and adopt its Constitution of the Council, Code of Ethics and Code of Conduct.
- 11.2. Members shall have to subscribe to the Constitution of the Council, Code of Ethics and Code of Conduct.
- 11.3. The Council shall enforce the rules and procedures of the Constitution of the Council, 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.
- 11.4. The Constitution of the Council, Code of Ethics and Code of Conduct shall include operational rules and procedures for decision making, selection procedures and criteria for members, member's commitments and obligations, procedures of terminating, suspending members etc.

12. MEETINGS OF COUNCIL

- 12.1. The meetings of the Council shall be called by the Chairperson of the Council.
 - 12.2. All the Councilors shall have the right to vote in their meetings.
 - 12.3. The decision of the Council shall be the two third of the majority of Councilors.
- Terms of Reference for the establishment of the ICT BEE Charter Council

12.4. The Council shall conduct an annual general meeting once every year and the invitation should be extended to its members.

13. FUNDING OF THE COUNCIL

13.1. The financial year of the Council shall be the period commencing on 1 April of each year and ending 31 March or such other period the Council may determine.

13.2. Every recognized member of the Council shall pay membership fees on annual basis to the Council.

13.3. The Council may generate revenue through donations, investment of funds, membership fees, and fees as fines for the contravention of the Constitution, Code of Conduct and Code of Ethics including contributions by Government.

14. RECRUITMENT AND REMUNERATION OF THE COUNCIL

14.1. The Executive Officer of the Council shall establish the secretariat of the Council and any other subcommittee of the Council.

14.2. The secretariat of the Council will be responsible for keeping the minutes of meetings of the Council and all committees of the Council but the Executive Officer shall ensure that copies of the decisions of the Council shall be sent to all councilors as soon as those decisions have been recorded and approved.

14.3. The recruitment process to establish Council's secretariat shall be developed by the Executive Officer for members of the general public in consultation with the Councilors of the Council.

14.4. The Council may pay to the person in its employ such remuneration and allowances and provide them with such pension and other employment benefits as are consistent with that paid in the public sector.

15. The Executive Officer and other councilors shall be paid such remuneration and allowances and be entitled to such benefits as the Minister of Communications may determine with the concurrence of the Minister of Finance.