

Framework for EEIP Applications

1. Introduction

The Information and Communication Technology (ICT) sector in South Africa stands as a cornerstone of the modern industrial landscape, functioning as a primary driver of economic modernisation, social inclusion, and global competitiveness. As the country navigates the complexities of the Fourth Industrial Revolution (4IR), the imperative for meaningful economic transformation has intensified, necessitating a robust regulatory framework that balances the need for social redress with the structural requirements of international commerce.

The Equity Equivalent Investment Programme (EEIP) represents a sophisticated policy instrument designed to facilitate this balance, offering a viable alternative for multinational corporations whose global policies preclude the dilution of equity at a local level. This report provides a comprehensive, expert-level framework for the conceptualisation, application, and administration of EEIPs in the ICT sector, meticulously aligned with the National Development Plan (NDP) 2030, the Digital Economy Masterplan, the 2025 Digital Transformation Roadmap, and the statutory requirements of the Promotion of Administrative Justice Act (PAJA).

The role of the ICT Sector Council under this Framework is advisory and facilitative in nature, unless otherwise expressly authorised by law or delegated by the Minister or the DTIC in writing.

2. Statutory and Regulatory Context of Economic Transformation

The governance of economic transformation in South Africa is anchored in the Broad-Based Black Economic Empowerment (B-BBEE) Act 53 of 2003, as amended by Act 46 of 2013. The Act seeks to address the historical legacies of systemic exclusion by promoting the participation of Black people in the ownership, management, and control of the economy. Within the ICT sector, these objectives are operationalised through the Amended B-BBEE ICT Sector Code, a Section 9(1) gazetted code that takes precedence over the Generic Codes of Good Practice in its application to entities operating within the sector's value chain.

2.1 Statement 103: The Mechanism for Equity Equivalents

Statement 103 of Code Series 100 provides the regulatory basis for the recognition of Equity Equivalent contributions by multinationals. Unlike traditional B-BBEE transactions that involve the sale of shares to black South Africans, an EEIP allows a "Measured Entity" to

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acquire ownership points through high-impact financial contributions into qualifying programmes. To qualify for participation, a multinational must demonstrate that it has a global practice of not divesting shareholding at a local level in any of its international operations. This eligibility must be supported by an affidavit from the global head of the entity and, in some instances, verified by independent auditors confirming the global non-divestiture policy.

The measurement of these contributions is intrinsically linked to the value of the multinational’s South African operations. Under the ICT Sector Code, the targets are traditionally more stringent than the generic codes to reflect the sector's strategic importance.

Measurement Target	Description of Calculation
Target A (Valuation)	30% of the value of the South African operations using a Standard Valuation Method.
Target B (Turnover)	4% of total revenue from South African operations annually over the agreed EEIP measurement period, calculated in accordance with Statement 103. Where the entity has not yet begun operations, financial forecasts and a valuation report must be provided.

2.2 Integration with Statements 400 and 500

While Statement 103 provides the structural vehicle for ownership recognition, the actual substance of an EEIP is frequently derived from the principles established in Statement 400 (Enterprise and Supplier Development) and Statement 500 (Socio-Economic Development). These statements define the types of activities that qualify as transformative and the methodologies for measuring their impact.

Statement 400 focuses on the development of Black-owned small, medium, and micro enterprises (SMMEs) and the enhancement of the local supply chain. In an ICT context, an EEIP might involve the establishment of tech incubators, the provision of venture capital to black-owned software firms, or the integration of black industrialists into the global supply chain of the multinational. Statement 500, conversely, targets broader social upliftment, emphasising digital literacy, infrastructure support in rural areas, and the bridging of the digital divide for marginalised groups, including women and youth. It is a fundamental rule of B-BBEE measurement that any contribution recognised under an EEIP cannot be double-counted under other elements of the scorecard, ensuring that the programme represents a genuine addition to the country’s transformation efforts.

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2.3 Strategic Alignment with the National Development Plan 2030

The National Development Plan (NDP) 2030 serves as South Africa's primary socio-economic roadmap, identifying ICT as a "critical foundation" for a capable and developmental state. For an EEIP application to be legally and strategically defensible, it must articulate a clear "theory of change" that aligns its projected outcomes with the high-level goals of the NDP.

3. ICT Infrastructure and Universal Access

A primary objective of the NDP is the achievement of universal access to affordable, high-speed broadband. This vision is echoed in the "SA Connect" project, which targets 100% broadband access by 2030. EEIPs in the ICT sector are encouraged to invest in infrastructure rollout that targets underserved areas, including schools, health facilities, and tribal authorities. Such investments not only fulfil B-BBEE requirements but also directly support the NDP's goal of reducing the digital divide and enhancing the productivity of remote communities.

4. Skills Development and Human Capital

The NDP emphasises the need for a skilled and capable workforce to drive an inclusive economy. The current "skills premium" for ICT professionals, such as software engineers, data scientists, and cybersecurity experts, remains a barrier to growth. EEIPs are a vital mechanism for addressing this gap. By funding specialised training programmes, bursaries, and work-integrated learning opportunities, multinationals can help build a pipeline of talent that supports both their own operations and the broader digital ecosystem. The focus must specifically be on "21st-century generic skills" and technical competencies that enable participants to exploit emerging technologies like Artificial Intelligence (AI) and the Internet of Things (IoT).

5. Economic Inclusion and SMME Development

The NDP identifies the growth of SMMEs as a primary vehicle for job creation. Within the ICT sector, this translates to the promotion of black-owned tech startups and the "meaningful" participation of Black industrialists in high-value sub-sectors like electronics manufacturing and telecommunications infrastructure. EEIPs must demonstrate how they provide these entities with more than just financial support, focusing on market access, mentorship, and capacity building to ensure their long-term sustainability.

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6. The Digital Economy Masterplan and the 2025 Transformation Roadmap

The Digital Economy Masterplan (DEMP) and the 2025 Roadmap for the Digital Transformation of Government provide the contemporary strategic context for ICT EEIPs. These policies shift the focus from simple connectivity to "meaningful access" and the integration of digital systems across the whole of government.

The Relevant Pillars of the 2025 Roadmap

Launched in May 2025, the Digital Transformation Roadmap identifies critical initiatives that serve as the blueprint for government modernisation. EEIP applications that align with these initiatives are highly likely to receive institutional support.

The roadmap's focus on "Digital Public Infrastructure" (DPI) suggests that future EEIPs should prioritise "multi-purpose technologies" that can be shared across various departments to drive efficiency and transparency. This "whole-of-government" approach requires multinationals to think beyond narrow sectoral silos and consider how their investment can catalyse broader societal transformation.

7. Cybersecurity and Data Governance

As the digital economy expands, the risks associated with cybercrime and data misuse have become existential. The DEMP emphasises the need for robust cybersecurity infrastructure and adherence to the Protection of Personal Information Act (POPIA). EEIPs can play a pivotal role by funding the establishment of Cybersecurity Response Committees, providing training for government IT officials, and developing localised AI governance frameworks that ensure the ethical and responsible use of emerging technologies.

8. Procedural Fairness and Administrative Law Compliance (PAJA)

The approval and monitoring of EEIP applications by the B-BBEE ICT Sector Council and the Department of Trade, Industry and Competition (the dtic) likely constitute "administrative action" as defined in Section 1 of the Promotion of Administrative Justice Act (PAJA) 3 of 2000. As such, these decisions should be administered in conformity with PAJA principles and therefore be lawful, reasonable, and procedurally fair.

8.1 Conflict of Interest and Recusal

Any person involved in the evaluation or recommendation of an EEIP must disclose any actual or potential conflict of interest and recuse themselves where such conflict may give

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rise to a reasonable apprehension of bias.

8.2 Section 3: Procedural Fairness for Individuals

Section 3 of PAJA mandates that any administrative action that "materially and adversely affects the rights or legitimate expectations" of an applicant must follow a fair procedure. In the context of an EEIP application, the following requirements are paramount:

- **Adequate Notice:** The Council must provide the applicant with clear notice of the nature and purpose of the evaluation process, including any criteria or policies that will be considered.
- **Reasonable Opportunity to Make Representations:** This is the core of the *audi alteram partem* (hear the other side) principle. If an application is likely to be rejected, the applicant must be given a chance to respond to the Council's concerns, provide new information, or clarify existing data.
- **Legal Representation:** In "serious or complex cases," the administrator may, at their discretion, allow the applicant to be assisted by legal counsel.

8.3 Section 4: Administrative Action Affecting the Public

Section 4 applies when a decision significantly impacts a broader group or the public interest. Given the strategic role of ICT in the national economy, certain EEIP decisions may require public consultation through notice-and-comment procedures or public hearings to ensure transparency and "active citizenry" as envisioned in the NDP.

8.4 Section 5: The Right to Reasons

Section 5 is a "cornerstone for transparency". It grants any person whose rights have been adversely affected by an administrative action the right to request written reasons for that decision within 90 days. The reasons provided must be "adequate", meaning they must explain the "evaluative process" used by the administrator, identifying which factors were considered relevant and how they influenced the final outcome. Failure to provide adequate reasons may lead to a presumption that the decision was taken without good reason.

8.5 Section 6: Judicial Review

Section 6 codifies the grounds upon which an administrative decision can be challenged in court. Applicants shall be afforded a reasonable opportunity to address material deficiencies identified during evaluation, and may request reconsideration of a decision on reasonable grounds, prior to seeking judicial review. An applicant may seek judicial review if the decision:

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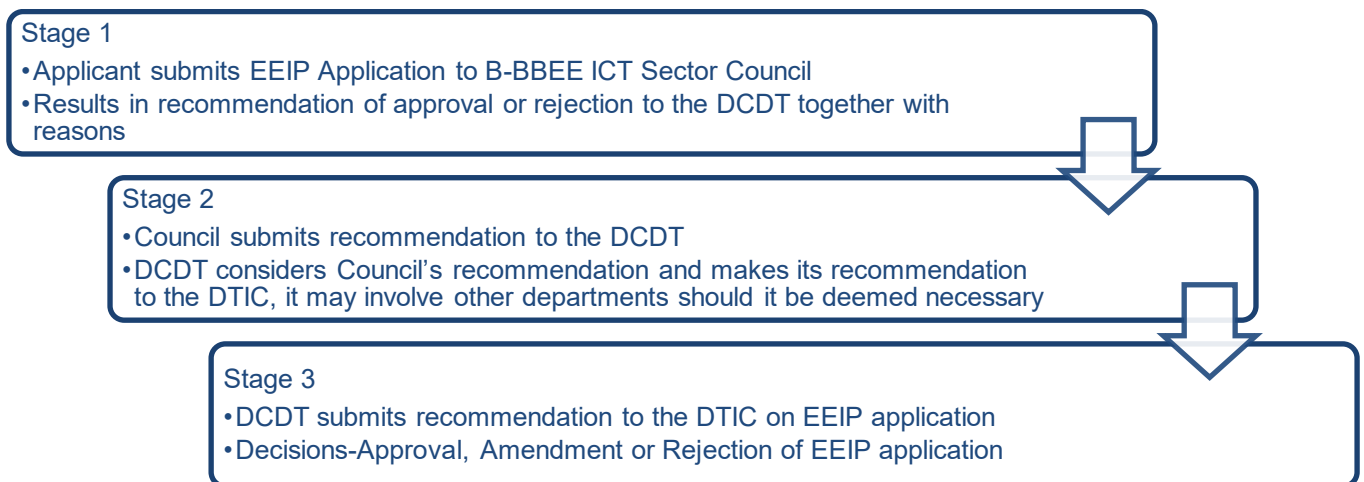
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- Was taken by an unauthorised person or was based on an error of law.
- Was procedurally unfair or biased (either actual or apparent).
- Was taken for an ulterior purpose or was influenced by irrelevant considerations.
- Was not "rational", meaning there was no rational connection between the information before the administrator and the decision made.

The legal defensibility of the EEIP framework depends on the Council's ability to demonstrate that every application was subjected to an "evaluative process" that was thorough, impartial, and based on the facts presented.

9. The EEIP Application Framework for the ICT Sector

9.1 Overall Process



The Equity Equivalent Investment Programme (EEIP) application process in the ICT sector reflects a structured, multi-institutional administrative pathway grounded in the Broad-Based Black Economic Empowerment Act and implemented through Statement 103 of the ICT Sector Code. At **Stage 1**, a multinational applicant submits its EEIP proposal to the B-BBEE ICT Sector Council, which performs an initial evaluation and formulates a reasoned recommendation for approval or rejection. This function aligns with the Council's role under the Sector Code to assess applications and recommend them to the relevant line ministry.

At **Stage 2**, the Department of Communications and Digital Technologies (DCDT), as the relevant line department for the ICT sector, considers the Council's recommendation and may consult other organs of state where necessary, reflecting a coordinated, sector-specific assessment consistent with principles of cooperative governance. The DCDT then

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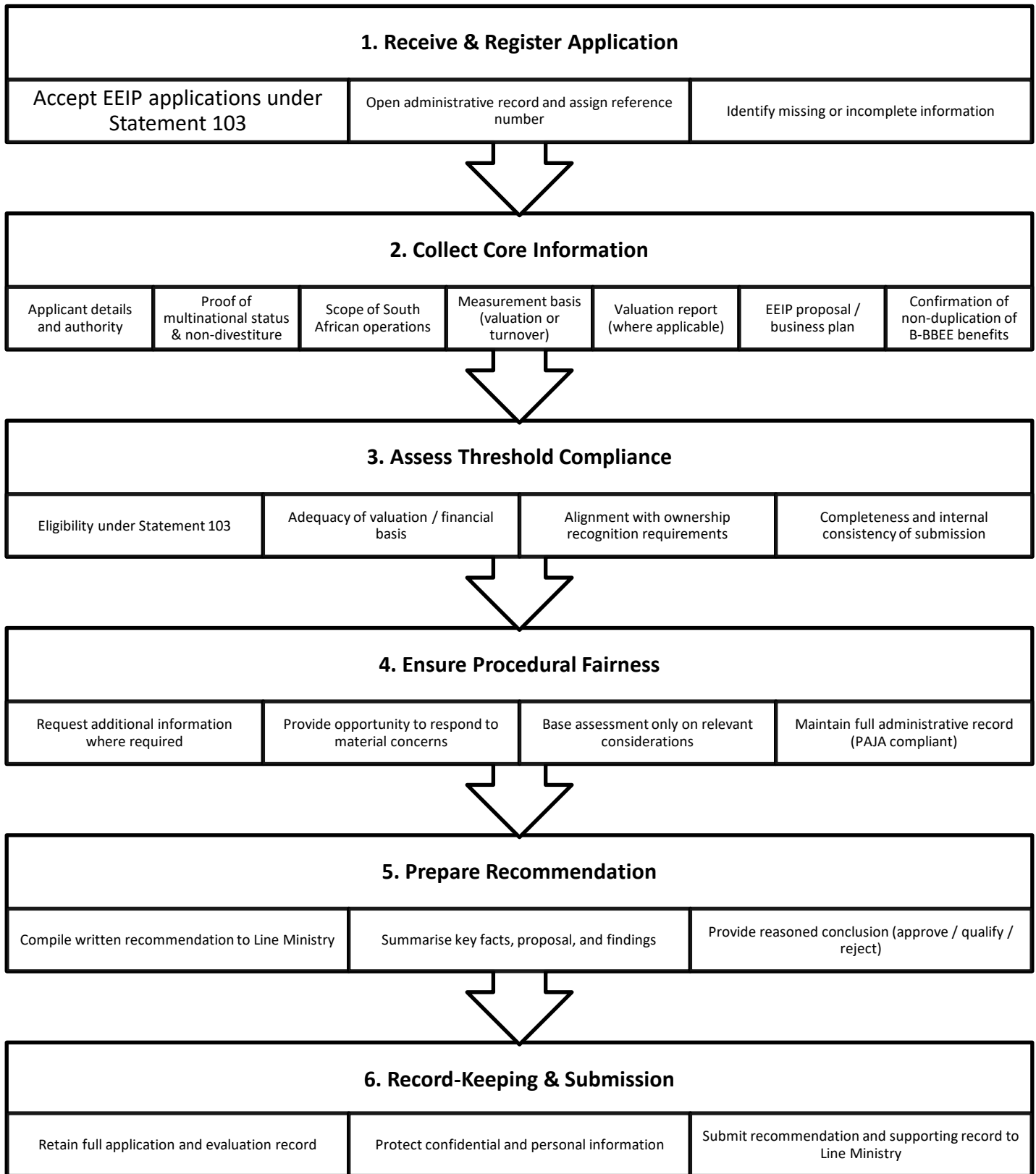
makes its own recommendation to the Department of Trade, Industry and Competition (dtic).

At **Stage 3**, the DTIC, acting through the Minister of Trade, Industry and Competition, exercises the final decision-making authority to approve, amend, or reject the EEIP, in accordance with the powers conferred under the B-BBEE Act and the applicable Codes of Good Practice. Throughout this process, the evaluation and decision-making functions constitute administrative action, or at minimum must comply with the principles of lawfulness, reasonableness, and procedural fairness as contemplated in the Promotion of Administrative Justice Act, including the requirement to provide adequate reasons for decisions and to base outcomes on relevant considerations.

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9.2 Council Process



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9.3 Receipt and registration of applications

The B-BBEE ICT Sector Council must receive and register applications by measured entities seeking recognition of an Equity Equivalent Investment Programme under Statement 103 of the ICT Sector Code.

- Upon receipt of an application, the Council must open an application record and allocate a reference number for purposes of administration, tracking, and record-keeping.
- The Council must maintain a complete administrative record of all material submitted by the applicant and all material considered by the Council in making its recommendation. This is required to support lawful, reasonable and procedurally fair decision-making and the provision of reasons where required.
- The Council must acknowledge receipt of the application in writing and identify any manifest omissions in the submission that prevent the application from being assessed.
- Where information is incomplete, the Council may request further information reasonably required to perform its recommendation function under Statement 103.

9.4 Information to be collected by the Council

For purposes of assessing and recommending an EEIP application, the Council must obtain, at a minimum, the following information and supporting documents from the applicant:

- Applicant particulars, including the full legal name of the measured entity, registration details, contact particulars, and proof of authority of the person submitting the application on its behalf. This information is necessary to identify the applicant and to maintain a proper administrative record.
- A comprehensive verified monitoring and evaluation report of the initial EEIP in instances where the application relates to a Review or Top-Up application.
- Confirmation that the applicant is a multinational seeking ownership recognition through an equity equivalent, together with the information necessary to support eligibility under Statement 103.
- Evidence of the applicant's global non-divestiture position, including the affidavit or equivalent declaration relied upon by the applicant in support of its request for recognition of an EEIP instead of local equity participation. This is central to the equity equivalent mechanism contemplated for multinationals.
- Information describing the South African operations against which the EEIP is to be measured, including the business activities conducted in the Republic and the basis on

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which those operations are said to fall within the scope of the ICT Sector Code. Contributions are measured against the value of the applicant's South African operations.

- The proposed measurement basis, namely whether the applicant seeks recognition on the basis of the value of its South African operations or annual turnover over the measurement period, together with the documents necessary to support that election.
- Ownership points are awarded according to the agreed 30% value of South African operations or annually where 4% of annual turnover has been utilised for the measurement period.
- A valuation report and related financial information, where the valuation method is relied upon, sufficient to enable the Council to assess the methodology and reasonableness of the proposed value. The DTIC's EE structures and secretariat functions expressly include analysing valuation methodologies.
- The EEIP proposal or business plan, setting out the nature of the programme, the intended beneficiaries or beneficiary classes, projected expenditure, implementation arrangements, milestones, duration, and expected outcomes. The DTIC's published EEIP process expressly contemplates business plans and scrutiny of proposals for commercial viability and sustainability.
- Information showing that the proposed programme is capable of recognition under Statement 103 and is not being claimed under another B-BBEE element, as official DTIC guidance records that approved EE programmes and points awarded may not form part of any other B-BBEE element in the multinational's scorecard.
- Any sectoral or line-function information reasonably required to support onward consideration by the Line Ministry, including a concise description of how the programme relates to the relevant sector or public-interest outcomes. Statement 103 expressly requires the Council to recommend to the relevant Line Ministry.

9.5 Council assessment of threshold compliance

The Council must assess whether the application, on face value, satisfies the threshold features required for onward recommendation under Statement 103, including:

- whether the applicant is applying as a multinational for recognition of an EEIP;
- whether the application contains sufficient information regarding the South African operations against which the contribution is to be measured;
- whether the chosen measurement basis is adequately supported; and
- whether the proposal is presented as an EEIP for ownership recognition and not as a contribution to be double-counted elsewhere on the scorecard.

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In conducting this assessment, the Council must confine itself to matters relevant to Statement 103 and any lawfully applicable requirements under the B-BBEE framework. The Council must not impose mandatory conditions that are not supported by the Act, the Code, or a lawful delegation or directive. The B-BBEE Act empowers the Minister to issue codes and regulations, and those instruments provide the legal framework within which the Council must operate.

9.6 Procedural fairness in the Council's process

In exercising its functions under this section, the Council must act in a manner that is lawful, reasonable and procedurally fair.

Where the Council considers that material deficiencies, inconsistencies or adverse conclusions may affect its recommendation, it must afford the applicant a reasonable opportunity to make representations or provide clarification before a final recommendation is prepared, to the extent required by PAJA.

The Council must ensure that its recommendation is based on information contained in, or properly obtained for, the administrative record, and that irrelevant considerations are excluded from the assessment. That approach is consistent with PAJA's requirements of lawfulness, rationality and fairness.

9.7 Recommendation by the Council

After completing its assessment, the Council must prepare a written recommendation to the relevant Line Ministry in accordance with Statement 103.

The recommendation must record, at a minimum:

- the identity of the applicant;
- the basis on which the applicant seeks recognition under Statement 103;
- the measurement basis proposed by the applicant;
- a summary of the EEIP proposal and the information considered by the Council;
- any material issues identified during the assessment; and
- the Council's recommendation, with reasons.

Where the Council recommends that an application should not proceed, or should proceed subject to qualification, the recommendation must contain adequate reasons linked to the information before the Council. PAJA recognises the importance of written reasons and rational administrative decision-making.

9.8 Record-keeping, confidentiality and onward transmission

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The Council must retain the full application record, including all supporting documents, correspondence, requests for clarification, representations received, and the final recommendation submitted to the Line Ministry.

In handling application materials, the Council must protect confidential and personal information in accordance with applicable law, while recognising that confidentiality claims must be assessed consistently with the governing legal framework and cannot be assumed merely by assertion.

The Council must transmit its recommendation and the supporting record necessary for consideration by the relevant Line Ministry in an orderly and traceable manner. Statement 103 expressly contemplates onward recommendation by the Council to the relevant Line Ministry, after which the Line Ministry considers and supports the application to the DTIC for approval.

10. Management Protocol

The EEIP process may require the disclosure of highly sensitive information, including trade secrets, financial models, and strategic roadmaps. The framework incorporates a robust confidentiality process set out in Annexure A that adheres to the Promotion of Access to Information Act (PAIA) and the Protection of Personal Information Act (POPIA).

10.1 Principles of Confidentiality

Information is not automatically classified as confidential; the onus is on the applicant to identify specific "Confidential Information" and provide a justification for its protection. The Council recognises information as confidential if it constitutes a trade secret or if its disclosure would cause significant harm to the commercial or financial interests of the applicant.

The confidentiality process is governed by:

- **Rule 14 of the Competition Commission (as a benchmark):** Distinguishing between "internal documents" and "business secrets".
- **Section 14 of the Electronic Communications and Transactions Act (ECTA):** Ensuring the integrity of data messages and digital records.
- **POPIA Compliance:** Protecting the personal information of individual beneficiaries and company officials.

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11. Conclusion and Strategic Recommendations

The establishment of a comprehensive EEIP framework for the ICT sector is not merely a requirement for regulatory compliance; it is a strategic imperative for the successful integration of South Africa into the global digital economy. By aligning transformation spend with the National Development Plan 2030 and the 2025 Digital Roadmap, the ICT Council ensures that every rand invested contributes to a more inclusive, connected, and technologically advanced society.

All applications to be submitted to chair@ictsectorcouncil.org.za and depchair@ictsectorcouncil.org.za.

Annexure A: Comprehensive Confidentiality and Data Protection Protocol

1. Purpose and Authority

- 1.1 This Protocol establishes the mandatory procedures for the identification, handling, and protection of confidential information submitted during the EEIP application process within the ICT Sector.
- 1.2 This Protocol is issued in accordance with the B-BBEE ICT Sector Code, the B-BBEE Act 53 of 2003 (as amended), the Promotion of Access to Information Act (PAIA) 2 of 2000, and the Protection of Personal Information Act (POPIA) 4 of 2013.

2. Definitions

- 2.1 "**Confidential Information**" means scientific, technical, business, financial, or marketing information which is not in the public domain and the disclosure of which is likely to cause harm to the commercial or financial interests of the Disclosing Party
- 2.2 "**Disclosing Party**" means the multinational applicant or any authorised entity providing information for the purpose of an EEIP application.
- 2.3 "**Receiving Party**" means the B-BBEE ICT Sector Council, its employees, members, and any authorised government officials or external advisors.

3. Identification and Application Process

- 3.1 When submitting an EEIP application, the Applicant must include a separate "Application for Confidentiality".

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3.2 The Applicant must:

- (a) Clearly identify the specific information or records deemed confidential (e.g., by marking them "CONFIDENTIAL").
- (b) Provide a detailed explanation for each item as to why it is confidential.
- (c) Demonstrate that the information is not publicly available.

3.3 The Council will issue a written determination on the confidentiality status within 14 business days of receipt, should the Council fail to do so, the information may be deemed confidential, unless otherwise determined in terms of applicable law.

3.4 Should the Council deny a request, the Applicant may withdraw the specific information and resubmit a non-confidential version of the application.

4. Obligations of the Receiving Party

4.1 The Receiving Party shall treat all Confidential Information as strictly secret and shall use it only for the "Proper Use" of evaluating and monitoring the EEIP application.

4.2 The Receiving Party shall implement appropriate "reasonable technical and organisational measures" to prevent unauthorised access, loss, or damage to the information.

4.3 Access to such information shall be limited to individuals who are bound by legally enforceable duties of confidentiality arising from their employment, office, or contractual arrangements, including, where applicable, a duly executed non-disclosure agreement, and who require access to the information strictly for the proper performance of their functions on a need-to-know basis.

5. Protection of Personal Information (POPIA)

5.1 All Personal Information must be processed only in accordance with the requirements set out in POPIA including where relevant consent and for the specific purpose of the EEIP application.

5.2 The Receiving Party must ensure that all reasonable measures are taken to identify internal and external risks to the Personal Information in its control.

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5.3 In the event of a security compromise, the Receiving Party must notify the Information Regulator and the affected data subjects as required by Section 22 of POPIA.

6. Mandatory Disclosures and PAIA

6.1 If the Receiving Party is required by law or a court order to disclose Confidential Information, it must provide the Disclosing Party with immediate written notice to allow the Disclosing Party to seek a protective order, to the extent legally permissible.

6.2 Requests for information under PAIA will be handled in accordance with the Act. The Council will rely on the "mandatory protection of commercial information of a third party" (Section 36 of PAIA) to refuse access to records that would cause commercial harm.

7. Breach and Remedies

7.1 The parties acknowledge that any breach of this Protocol would cause the Disclosing Party irreparable harm that cannot be adequately compensated by damages alone.

7.2 The Disclosing Party may, in addition to any other remedy, enforce this Protocol by interim interdict or specific performance.

8. Duration

The obligations of confidentiality shall remain in effect for the duration of the EEIP and shall survive for a period of five (5) years after the termination of the framework agreement.

9. Governing Law

This Protocol is governed by and shall be construed in accordance with the laws of the Republic of South Africa



Katharina Pillay

April 2026

Deputy Chairperson

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