



## **Submission on the DTI Draft Codes of Good Practice on Broad-based Black Economic Empowerment**

**INNOVATIVE MEDICINES SA**

**March 2005**

### **1. INTRODUCTION**

Innovative Medicines SA (“IMSA”) thanks the DTI for the opportunity to submit this document on the Draft Codes, as published in December 2004.

IMSA is a pharmaceutical industry organisation, representing six multi-national pharmaceutical manufacturing companies<sup>1</sup> operating in South Africa and making up some 32% of the private prescription market. IMSA’s chairperson has been appointed by the Minister of Health to serve on the Ministerial Task Team currently drafting a Framework Health Charter. IMSA has had a specific committee tasked with BEE/Health Charter matters, since late 2003.

IMSA starts this submission by providing a brief outline of the pharmaceutical industry. IMSA will then make some general comments, but also specific comments on certain aspects of the Codes and its accompanying statements, the most pertinent relating to Statement 000, as it deals with important premises relating to BB BEE.

One of IMSA’s fundamental principles is to engage constructively with government and stakeholders in South Africa. IMSA is therefore willing to discuss any part of this submission and to share information and its views with the DTI.

### **2. BACKGROUND INFORMATION ON THE INNOVATIVE PHARMACEUTICAL MARKET IN SOUTH AFRICA**

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<sup>1</sup> Pfizer Laboratories (Pty) Ltd, MSD (Pty) Ltd, Novartis Pharma (Pty) Ltd Sanofi-Aventis, Eli Lilly (SA) (Pty) Ltd, Roche Products (Pty) Ltd. For more information refer to <http://www.innovativemedicines.co.za>.

IMSA companies are all innovative in nature, i.e. companies that invest in research and development of new medicines. These companies annually jointly invest some R200million in Research and Development in South Africa and contribute some R297million in corporate social investment programmes in Southern Africa. Five companies have manufacturing plants in South Africa.

The pharmaceutical industry is regulated, to a large extent by –

- the Medicines and Related Substances Act of 1965, as amended,
- various sets of regulations and
- guideline documents and codes issued by the Medicines Control Council (MCC).

These regulatory measures aim, broadly speaking, at ensuring the safety and efficacy of medicines. A variety of registration/licensing requirements exist (we leave out licensing requirements applicable to others in the medicines supply chain, such as wholesalers/distributors and dispensers (hospitals, pharmacies, medical practices)) that include -

- Manufacturers and importers must be licensed, inspected regularly and adherence to Good Manufacturing Practice is regularly monitored, even if the manufacturing facility is outside of the South African borders.
- Every product that falls within the ambit of the Act must be registered, after stringent compliance requirements are met, including requirements relating to safety profiles and efficacy.
- Labels, package inserts and patient information leaflets have to be approved and every subsequent amendment has to be approved.
- Every clinical trial must be registered.

Non-compliance or a change in status at any stage may lead to the licence or registration being suspended or withdrawn. For professionals employed in this field, additional requirements are set by the Pharmacy Council in terms of the Pharmacy Act.

The pricing of the pharmaceutical industry products in the private sector is regulated by the Regulations relating to a Transparent Pricing System of 2004. In the public sector, companies submit tenders according and subject to the provisions of the Public Finance Management Act of 1999. The pharmaceutical industry will be affected by any subsequent Charter as a supplier to both the public- and private sector, especially as its private sector clients, in turn, will give preference to procure from a BEE-compliant enterprise. It should, however, be noted that the inclusion or exclusion of medicines from formularies set by health sector role-players and used in the medical schemes environment, has to be based on evidence-based medicine.<sup>2</sup>

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<sup>2</sup> Regulation 15 H and I to the Medical Schemes Act of 1998.

### 3. GENERAL COMMENTS

IMSA supports the development of the Codes of Good Practice and its application to the implementation of the objectives Broad-based Black Economic Empowerment Act of 2004 (“BB BEE Act”). IMSA believes that all enterprises in South Africa should contribute to all six pillars of BB BEE. IMSA is also of the view that all targets, timeframes and evaluations of BEE participation should be rational and reasonable,<sup>3</sup> and in accordance with the constitutional underpinnings of the Act.

The BB BEE Act flows in general, from section 9(2) in the Constitution -

Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken

and finds a particular manifestation within the context section 27 for the pharmaceutical industry and other stakeholders in a future Health Charter -

Everyone has the right to have access to ... (a) health care services, including reproductive health care;... (c) social security... The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. No one may be refused emergency medical treatment.

IMSA wishes to make the following general comments –

- The Glossary (Statement 040) should, for practical reasons, be moved to the beginning of the Codes.
- Definitions, scope and application should be consistent throughout the Codes and Statements, unless the use of a different definition or scope of application is necessary, in which case the rationale for the differentiation should be explained. In some of the statements a definition or description is repeated in two or more paragraphs in the text of such statement.
- Quotes and phrases taken from the BB BEE Act and other legislation should be referenced, in order to facilitate coherence and an understanding of the system. Where definitions are further delineated, it should be reference to the empowering provision and/or broader definition within which such narrowed definition fall. In case of any dispute, a Court will go back to section 9 of the BB BEE Act and evaluate the scope of the aspects and *necessary*

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<sup>3</sup> These are constitutional criteria employed to determine the justifiability of programmes aimed to give effect to- and/or to limit rights.

auxiliary aspects, authorised by section 9.<sup>4</sup> Therefore the threshold criteria for Codes not explicitly mentioned in the Act is set at the level of “necessity”.

- The application of the Codes should be clear, i.e. who are bound by it and to what extent. Some paragraphs make it clear that there should be “strict compliance”, whilst other emphasis the “guiding” nature of the Codes. Clarity is needed, for example –
  - All state organs are bound to incorporate BB BEE criteria in the context of developing tender policies, licensing requirements, etc., unless ...
  - The private sector is bound to the extent that it wishes to obtain a good score on, for example, procurement from BEE-accredited enterprises in view of themselves entering into some relationship with a state organ.
- If any state organ is bound to incorporate BB BEE criteria, clarity is needed as to the duties of such an organ of state *vis à vis* its subjects or a party to a potential contractual agreement or other interaction. For example, that it should be stated in advertisements or licensing criteria that BEE forms part of the evaluation and carries a particular weighting. This will contribute to certainty and stability.
- A schematic presentation of the Act, the Codes and the Statements and its applicability will be helpful.
- As time-lines and the gradual (progressive) achievement of targets are not set, can it be presumed that these left to various sectors to determine according to the prevailing and envisaged situations applicable to the particular (sub)sector?
- The Code implies provisions contained in various other laws (including those classified as constitutional, commercial, financial, professional, etc.). In the interest of coherence and clarity, it is imperative that the relationship of the Codes with these various laws be clarified, and that mechanisms are created whereby possible conflicts can be resolved, or whereby the existence of specific legislative barriers that may hinder implementation or cause conflicting interpretations, by brought to the attention of, for example, the BEE Advisory Council. This

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<sup>4</sup> Section 9 states that the codes ... (1) *may* include—

- (a) the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
  - (b) qualification criteria for preferential purposes for procurement and other economic activities;
  - (c) indicators to measure broad-based black economic empowerment;
  - (d) the weighting to be attached to broad-based black economic empowerment indicators referred to in paragraph (c);
  - (e) guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector; and
  - (f) any other matter *necessary* to achieve the objectives of this Act.
- (2) A strategy issued by the Minister in terms of section 11 must be taken into account in preparing any code of good practice.
- (3) A code of good practice issued in terms of subsection (1) may specify—
- (a) targets consistent with the objectives of this Act; and
  - (b) the period within which those targets must be achieved.

should also assist in avoiding potential legal action on the non-awarding of, for example, tenders, or disputes relating to scores.

- Section 10 to the BB BBE Act sets the scope of application of the Codes of Practice as (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in terms of any law; (b) developing and implementing a preferential procurement policy; (c) determining qualification criteria for the sale of state-owned enterprises; and (d) developing criteria for entering into partnerships with the private sector. This is, however, in several places in the Codes extended to include “engaging in economic activity”. IMSA is not certain as to the meaning of this phrase and how it fits in with section 10 and section 11 (as it appears sometimes under sentences relating to the BEE strategy).

#### **4. COMMENT ON CONCEPTUAL FRAMEWORK (CODE 000, STATEMENT 000)**

IMSA recognises the structural impact of apartheid and the necessity to employ special measures, pursuant to the principle of substantive equality, to correct these. During those years many multi-national companies operating in South African during the apartheid years adhered to the Sullivan Code.

IMSA fully agrees with the fact that BEE should be used as a tool to broaden the country's economic base. IMSA submits that there are indeed ample opportunities to do so within the medicines industry in, for example, the fields of clinical trials, packaging, distributions, training and development of scarce skills, etc. IMSA is also of the view that, whatever mechanisms are employed, these should ultimately lead to enhance healthcare rights and transformation in the healthcare sector. For this a wide range of strategies, rationally connected to the particular “mischief” it seeks to cure (i.e. the particular challenges in healthcare and BEE in the health sector), are required. These challenges may vary from the representation of black healthcare professionals in some categories and in private facilities to the availability of certain types of suppliers with BEE credentials.

**Ad para 6(a), pg 5:** Insofar as the public sector must apply the Codes when issuing licences, concessions and authorisations par 6(a) there will be implications for the pharmaceutical sector. It is, at this stage not clear how the Codes will apply within and to the existing system as far as is “reasonably possible”.

IMSA proposes that the following be included in Statement 000:

“In setting criteria for licences, concessions and ... authorisations, government departments have to consider -

- Specifics inherent and central to each sector<sup>5</sup>
- The objectives of legislation currently governing the issue
- Mechanisms to ensure that applicants or licensees are aware of any additional criteria
- Informing applicants of the weightings of BEE criteria *vis à vis* “traditional” criteria
- Whether mid- or low-level BEE ratings may cause the withdrawal of a licence or registration and/or other consequences.”

**Ad para 6(b):** S217<sup>6</sup> of the Constitution provides the constitutional imperative for preferential procurement, given effect to by the Preferential Procurement Policy Framework Act of 2000. The regulations to this Act already provides for recognition of ownership, defines HDI's, etc. in the procurement policies of the state and public entities. It is not clear how the Codes and Charters will change these, if at all. It is not clear what the expectation will be of private enterprises wishing to embark on preferential procurement in view of obtaining a good their BEE score.

It should be noted that section 3 of the Preferential Procurement Act creates the possibility of exemption, on request of “an organ of state ... from any or all the provisions of this Act if ... the likely tenderers are international suppliers”. This section recognises the conditions that may face international suppliers, in terms of their global policies (e.g. on forms of ownership, its own procurement of products, materials and services), forms and structures as well as a recognition of the importance of investment. This is also often related to the relative importance of intellectual property rights and whether there is a high demand for safety and security concerning the particular service(s) or product(s).

Insofar as the Codes relate to criteria other than those already specified in the Preferential Procurement Act (e.g. employment equity, etc.), or overlaps with existing criteria (e.g. HDI ownership and the criteria listed in regulation 17,<sup>7</sup> etc.), there should be some measure of clarity

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<sup>5</sup> Section 195(5) of the SA Constitution authorises differentiation by legislation regulating public administration and differentiation between different sectors, administrations or institutions.

<sup>6</sup> 217. Procurement.—(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for—

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

<sup>7</sup> (a) The promotion of South African owned enterprises;

(b) The promotion of export orientated production to create jobs;

(c) The promotion of SMMEs;

(d) The creation of new jobs or the intensification of labour absorption;

as to when the BEE rating will apply in relation to the exiting tender criteria, in order to prevent “double scoring” for aspects already covered in the tender criteria.

**Ad para 11 (pg 6):** “Organ of state” is defined in section 239 of the South African Constitution. The BB BEE Act defines “organ of state” as inclusive of the executive (government departments)- , legislatures in all spheres and constitutional institutions (schedule 1, PFMA). However, Statement 000 goes further than this by adding the institutions listed in Schedules 2 and 3 of the PFMA, that include so-called “major” and “other” public entities, such as DENEL, Eskom, the HSRC, the SABS, etc. It is unclear why the definition in the Act and the Code differs. It is also not clear whether all state-owned enterprises are covered or not, and whether enterprises or institutions fulfilling public functions, but which are not owned by the state, are covered or not.

**Ad para 18 -20 (pg 8):** IMSA in particular supports the emphasis placed on economic growth and wishes those who contribute to this, to be recognised in the balanced scorecard. The current value of 10% may not serve as a large enough incentive for enterprises to consider it a serious aspect of BB BEE.

**Ad para 22 & par 25 (pg 9):** Although supportive of the inclusion of qualitative factors and the principle of substance over form, in the measurement of BB BEE, IMSA is of the view that the absence of guidance as to *how* the qualitative- and substantive aspects of the codes are to be measured, may lead to it not being implemented.

**Ad para 27-28 (pg 9-10):** Comparability is an important element. However, as transformational needs may differ from sector to sector, it is submitted that variations may, and indeed should occur, in order for the Charters to assist in a meaningful way in addressing the particular BB BEE objectives per sector.

**Ad para 30 and 31-34 (pg 10-11):** It is unclear what is meant by these paragraphs and under which circumstances “completeness” will be required and under which the information may be needed to make “relevant economic decisions”. Issues of confidentiality may also lawfully prevent

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- (e) The promotion of enterprises located in a specific province for work to be done or services to be rendered in that province;
  - (f) The promotion of enterprises located in a specific region for work to be done or services to be rendered in that region;
  - (g) The promotion of enterprises located in a specific municipal area for work to be done or services to be rendered in that municipal area;
  - (h) The promotion of enterprises located in rural areas;
  - (i) The empowerment of the work force by standardising the level of skill and knowledge of workers;
  - (j) The development of human resources, including by assisting in tertiary and other advanced training programmes, in line with key indicators such as percentage of wage bill spent on education and training and improvement of management skills; and
  - (k) The upliftment of communities through, but not limited to, housing, transport, schools, infrastructure donations, and charity organisations.

reporting before a transaction is concluded. Competition law and investigations by the Commission may also play a role in this regard.

**Ad para 41 (pg 12):** It is submitted that the beneficiaries of direct empowerment include those holding any form of ownership (and not only “equity” as held in companies) over property, property being inclusive of material and immaterial goods and property rights in such goods. The beneficiaries of human resource development may also be non-employees and non-job-seekers. For example, investment in clinical trials in South Africa often necessitates the training of investigators and support-staff, accounting for the development of important skills and resources for the South African economy. Such persons are contracted to do the work relating to the trial for the employer, although in certain cases it never becomes their sole employment and they often continue with their “other”, ordinary work. This investment, especially where targeted at HDI and when conducted in historically disadvantaged areas and communities, should form part of this. The beneficiaries of indirect empowerment may also include contractors and out-sourced work. It is also unclear what the meaning of “economic resources” is in this table.

**Ad para 42 (pg 13):** IMSA is of the view that equating ownership to shareholding unnecessarily narrows the possible application of Charters and hampers the full achievement of the objectives of *broad-based* BEE, growth in the number of enterprises and empowerment in terms of real skills transfer, -application and development as an owner. It is possible for an enterprise to contribute to BB BEE by, for example, selling off an asset or the rights to certain goods, concepts, services, or by outsourcing an aspect, unit or function of the enterprise, etc. In IMSA’s view these should be recognised, measured and rewarded by means of the balanced scorecard.

**Ad para 47 (pg 14):** IMSA suggests that, for the sake of completeness, an acknowledgement of the limitations other than “financial and analogous” may be required, i.e. contractual (e.g. partnership agreements), and legislative (e.g. the Companies Act and laws governing various professions such as the Health Professions Act that places limitations on who may practice with whom and who may own health care practices) regulation, which may serve as an impetus to for law reform and/or to adapt scorecard elements in order to facilitate the achievement of BB BEE in such contexts.

**Ad para 50 – 52 (pg 15-16):** IMSA fully supports the acceleration of employment equity and skills development, as these two aspects also prepare and support persons to take active roles in shaping the South African economic landscape. It is, however, also important that the supply of persons through educational institutions, or persons who have potential but not opportunity, be addressed. Contributions of enterprises to this pre-employment aspect should be recognised.

**Ad para 54 (pg 16):** In IMSA's view enterprise development is key in effecting the required growth in the economy and in achieving large-scale BEE.

**Ad para 60 (pg 19):** It is not clear who will set the various sub-minimums and on what criteria these will be based. IMSA suggests that sub-minimum scores be set by the various sectors in accordance to the context of the specific sector and its specific needs.

**Ad para 61 (pg 19):** IMSA remains concerned that an enterprise are penalised twice by means of the particular calculation, i.e. their sub-minimum score of, for example, 3 out of 20, is discounted to 0 (para 60), and then there is a second penalty by means of the calculation of the overall score. IMSA submits that this may serve as a disincentive for enterprises who can contribute on other categories, to do so beyond what is required by other laws such as the EEA and SDA, or even to do something more by investing, for example, in enterprise development, leading to the objectives of BB BEE not being achieved.

**Ad para 61 and 62 (pg 19):** IMSA submits that decisions on bonusing and discounting be left to a specific sector, in order to allow for such a sector to successfully address challenges posed by its specific context. IMSA is of the view that discounting, if IMSA's understanding is correct, may be a disincentive for enterprises to contribute in all fields, or fields other than equity ownership, as such contributions will literally be discounted.

## **5. COMMENT ON SECTOR TRANSFORMATION CHARTERS (CODE 000, STATEMENT 010)**

Ad para 10 (Pg 24): There is a need for a definition for **Transformation Charters** (section 11 BB BEE Act), no definition could be found in the BB BEE Act, nor in the Codes. Cross-reference is made to the Glossary, but there is no definition in Glossary. It is also not clear what is meant by a "Sector Charter" and how that differs from a Transformation Charter. In para 12 the phrase "empowerment charter" is used. Clarity is needed in this respect, especially for sectors, such as health, that is currently in process of developing a Charter. The relation to the Strategy document referred to in section 11 of the BB BEE Act is also not clear.

**Ad para 12 (pg 25):** IMSA presumes that, although only sectors that do business with Government (per para 11) are "encouraged" to develop Transformation Charters, sectors not doing business with government will be "captured" in the fold as they may supply, contract or otherwise be associated with institutions that do business with government, i.e. the trickle-down effect? For example, would a short-term insurer come into the fold by means of it doing business

with an IMSA company who, if they want to qualify for a tender, has to ensure that they procure short-term insurance services from a well-BEE-rated insurer? Would it not be possible, due to the generic nature of the scorecard that certain sectors could be left relatively unaffected, in spite of the trickle-down effect?

**Ad para 14 (pg 25):** The “common commercial and other characteristics” may necessitate variations within a specific sector, for example, the health sector consists of health insurers (medical schemes), software houses, healthcare professional practices, a large public sector, private hospitals, manufacturers of devices, medicines, etc., i.e. a wide variety of stakeholders that may not fulfill this criterium. IMSA proposes that recognition be given to such internal variations, instead of a specific, “other” charter for such sub-sectors.

**Ad para 15, 16 (pg 25-26):** IMSA suggests that this paragraph should guide stakeholders as to approximately when (in terms of sequence) these steps (a) – (d) should happen, for example, Minister announces intention to publish Transformation Charter, major gathering, workshops organized or under auspices of, for example, the Minister and/or steering committee elected at xyz. Perhaps a more detailed sequential graph is needed.

**Ad para 17 (pg 26):** IMSA submits that the word “may” should change to “should include, but is not limited to”, in order to ensure that there is compliance with democratic and consultative processes, especially in view of the requirements set in para 19 and 37.

**Ad para 19 (pg 27):** It is not clear what “equitable” means, would large stakeholders obtain more seats at the negotiating table, and how would “large” be measured?

**Ad para 20 (pg 27):** There is a need to clarify who may qualify as “consultation”-stakeholders, and who will qualify as “negotiation”-stakeholders. In IMSA’s view, and in line with the principle of inclusivity as per Statement 000, all stakeholders should qualify for both, although their representatives and the format of interactions may differ. IMSA’s view is that according to Appendix 1, negotiations follow on consultation.

**Ad para 23 (pg 27):** The use of the word “participants” (1<sup>st</sup> line) creates uncertainty – are they the same as the “relevant stakeholders” (para 11)? Furthermore, it is assumed that the appointment of a Steering Committee should be done during the consultation phase?

**Para 46(c) (pg 32):** IMSA finds this subsection unclear. It is possible to define or give examples of “extenuating circumstances”. It is also unclear why stakeholders would go through a

consultative and negotiating process and work on identifying specific challenges, workup solutions and set an appropriate scorecard to measure those, if any organ of state can at any stage revert back to the generic scorecard.

IMSA fully supports the processes outlined in this Statement. It is, however, concerned about the applicability of this part to Charters already in development, especially as it wishes to see this process applied to current processes.

#### **6. COMMENT ON BEE ADVISORY COUNCIL (STATEMENT 020)**

IMSA supports the establishment of an Advisory Council.

IMSA submits that the words “and/or” found in **para 7** be removed, to ensure compliance with the wording of this section in the BB BEE Act. **Para 10(c)** (“fit”) and **13** (“inadequate”) leave a wide discretion and could be considered vague. In terms of sequence, the decision of how many persons should constitute the Council should be made first, after which invitations to nominate should be made. It is not clear if **para 14** envisages cabinet re-shuffles as “appoint a different cabinet Minister in their place”.

#### **7. COMMENT ON BROAD-BASED BEE (STATEMENT 030)**

It is not clear to IMSA where this statement fits into the balanced scorecard, where it is reflected how it will be implementation in, for example, the context of Transformation Charters. For example, the application of the procurement example on pg 57 in relation to the balance scorecard is also not clear.

The rationale for the apparent limitation of broad-based BEE to “when using financing instruments” is not clear to IMSA. There seems to be an equation between “direct empowerment”, “equity ownership” and “narrow-based BEE” – IMSA is not sure that it is interpreting this correctly and wishes to obtain guidance from the DTI on this matter.

#### **8. COMMENT ON GLOSSARY (STATEMENT 040)**

IMSA has recommended elsewhere that –

- Definitions be consistent and applied coherently in the full set of Codes.

- Where variations occur in individual statements and/or where definitions differ from those awarded in empowering legislation, these be explained or substantiated, in view of possible challenges on the impact of limiting or extending a definition.
- Cross-references be made to applicable laws, other sections in the Codes and/or Statements and where there are deviations, and substantiation should be provided.

Definitions that may be contentious include that relating to black people (cf Constitutional case law on differentiation between citizens, permanent residents and non-citizens/non-residents).

IMSA also notes that no definition is provided for “ownership” and suggests that it be related to property that could include material and immaterial goods.

IMSA finds the various definitions relating to “equity”, “equity interests”, “economic interest”, “rights limitation”, “unrestricted” etc. confusing. Although sometimes clear as individual definitions, it does not form in IMSA’s mind a coherent and clear picture. Depending on a number of variables, such as the type of legal entity, its founding documents and existing agreements, whether owners are also employees and the likes, legislative limits (e.g. on professions) all influence these. The definitions seem to be modelled on traditional companies, and from there deductions or applications are made to other forms of enterprises. IMSA suggests that a simpler format be followed that identifies, firstly, the specific stake/contribution in an enterprise (in partnerships, for example, a partner need not contribute financial resources, s/he may also only contribute his or her skills) and secondly the stake in the outputs of that enterprise. The third element would then be the measure of control such an owner of a stake would have within the operations of the business, which may be broken down into concrete examples befitting of the various legal forms of enterprise found in South Africa.

Not all the definitions (or concepts central to the definition of BB BEE) are accounted for in the balanced scorecard.

#### **9. COMMENT ON ACCREDITATION OF BEE RATING AGENCIES (STATEMENT 050)**

IMSA believes that Rating Agencies should be subject to a Code of Ethics and an Enforcement Mechanism. The mere accreditation of an agency may not be enough - there should be continuous quality assurance mechanisms and mechanisms to ensure that agencies remain free from undue influence, as well as complaints mechanisms.

#### **10. COMMENT ON OWNERSHIP**

As representing multi-national concerns, IMSA is eagerly awaiting the Statement 110, especially the meaning to be attached to the phrase “indicative ownership”. IMSA has made clear its views on the meaning of ownership elsewhere in this submission, including its view that ownership should not solely be seen as an extension of the shareholding/equity interest model and should include all types of ownership contributions.

Ownership should be contextualised in view of the contribution an enterprise may be making in terms economic growth and enterprise development (beyond mere financing). It should include the disposals of assets, concepts, units, resources, etc by means of outsourcing, sale, contracting, etc; the establishment and development of joint ventures; the transfer of specific niche-market skills (such as those relating to clinical trails and research and development); etc., provided that these culminate in the sector-specific transformation goals and the demonstrable and measurable contribution to the achievement of the objectives of the BB BEE Act.

IMSA looks forward to engage the DTI on this particular aspect of the Codes.

#### **11. COMMENT ON MANAGEMENT (CODE 200, STATEMENT 200)**

**Ad para 2 (pg 125):** Ownership, Control & Management are not defined in the Glossary and IMSA is of the view that it should. It is submitted that the definition of management includes a breakdown of management levels and the associated levels of independence, risk-taking and responsibilities be set as possible features. This would also allow one to track progress from one level to another, and possible placing of persons into government body structures. Control is associated with the effective exercise of shareholding rights, to avoid fronting, and is connected with ownership, rather than management.

**Ad para 27 (pg 130) & tables in Appendix 1 (pg 131):** For multi-nationals, the top position that could be held by an employee is sometimes described as “country manager” or similar. IMSA suggests that this, and other descriptions encapsulating the same idea, be included in the table on pg 130.

**Ad Appendix 1 (pg 131):** The definitions and delineation of strategic positions may not be as generic as found in the tables. Due to the specific nature of the pharmaceutical industry, positions, such as that of Medical Director, Director of Corporate Affairs and Director of Regulatory Affairs, Factory Managers, etc. may be more strategic.

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