

## **CODES OF GOOD PRACTICE FOR FOREST GROWER PARTNERSHIPS IN SOUTH AFRICA (THEREAFTER REFERRED TO AS "THE CODES")**

### **INTRODUCTION**

1. The Forest Sector BBBEE Transformation Charter (hereafter referred to as "the Charter") was gazetted as the Sector Code on June 12, 2009, in terms of Section 9(1) of the Broad Based Black Economic Empowerment Act, 53 of 2003 (thereafter referred to as "the BBBEE Act") as may be amended from time to time.
2. Section 12.2.1(b) of the Charter requires that Codes for Emerging Forest Grower Schemes be developed and operational within a period of one year of the date of signature of the Charter. The Charter stipulates that the Codes will:  
  
    "...control and direct contracts with emerging growers in company-affiliated schemes. The Codes will ensure transparency in the costing of support services and market related pricing arrangements for timber that will support sustainable business practices, good governance and fair labour practices."
3. Notwithstanding the above original defined scope for the Codes, the latest position of the Charter Council seeks to embrace diverse operating environments which may be broader than the schemes to include partnership projects either of new afforestation, land reform and State's assets transfer amongst others. This means that it is impossible and impractical to apply a single standard form contract to all encounters within the Sector. These Codes are drawn up to inform the negotiation and content of contracts entered into between strategic partners and growers (collectively referred to as "the Parties"), so as to meet the requirements of the Charter.
4. The Parties must apply the principles set out in these Codes when negotiating and concluding contracts.

### **CODES PRINCIPLES**

#### **Partnership negotiation**

5. The Parties may choose the manner in which partnerships are identified, selected and established. In such partnerships, the grower may be an individual or a group in which case prior to concluding a business arrangement with a partner(s) they must have established a legal entity democratically.

6. The Parties must ensure that the partnership negotiations are open, transparent, equitable and accessible and must follow any best practice as agreed or as amended from time to time published by the Department of Agriculture, Forestry and Fisheries and/or other partners.

#### **Broad Based Black Economic Empowerment**

7. Growers falling within the thresholds<sup>1</sup> prescribed by the BBBEE Act and/or replaced from time to time should provide strategic partners with a current certificate issued by an accreditation agency including auditors reflecting the level which they have achieved for the purposes of the BBBEE Act and should do so within the timeframe prescribed in each contract.
8. For selection purposes, preference should be given to strategic partners who meet requirements on support, service and price, and with sound BBBEE credentials including levels and plans.

#### **Partnership duration**

9. When deciding the duration of a partnership, the Parties should take into account the levels of capital investment and repayment capacity as well as crop rotation regime required by a grower to carry-out contract activities to the required standard.
10. Where the duration of a contract has been established taking account of above factors and others, such factors and their thresholds may be included as a contractual obligation and the contract may provide for monitoring of compliance with that obligation.
11. All contracts should clearly state the period for which they have been concluded. Where a contract applies for a fixed term, it must set out its commencement and expiry dates. If a contract is for an initial period followed by an indefinite period, the Parties must consider whether it can be terminated on notice and if so, the contract should say so and set out the applicable notice period.
12. Where a contract may be renewed, it must set out the circumstances in which that renewal will take place and describe any applicable process.
13. A contract should set-out dispute resolution mechanism (see Section 20) and how it can be terminated early during which time the Parties may not and/or may solicit other partnerships, respectively.

#### **Price determination**

---

<sup>1</sup> There are three enterprises' thresholds as contemplated by the Forest Sector Charter, viz. Exempted Micro-Enterprises (turn over >R5mIn), Qualifying Smalls Enterprise (turn over between R5mIn and R35mIn) and Large Enterprise (turnover <R35mIn).

14. Industry models for estimating contracting and services rates considering all associated statutory implications should be used as guidance for services valuation negotiating and concluding pricing.
15. The process and mechanism for determining market price and/or value of timber product(s) should be agreed and/or accepted in the contract by the Parties.
16. All periodic adjustments in costs and/or prices should be linked to market forces, agreed indices and/or measurable or determinable standards which should be clearly spelt-out in the contract.

#### **Payments**

17. Contracts should stipulate the prerequisites for, timing of, and the manner in which, payments will take place and, if applicable, deal with any early, late, penalty, incentives as well as any other applicable finance charges.

#### **Performance management system**

18. The contract should clearly set out any applicable performance standards and the consequences for not achieving those standards. It should stipulate how to achieve these standards and the system or method to be used to ensure compliance and to stipulate the consequences of non-compliance to the Parties. The strategic partner(s) shall facilitate training in respect of a performance management system for a grower and/or when a performance management system is modified.

#### **Impossibility of performance**

19. The complexity of the forestry business environment regularly includes decisions as to whether or not to operate in conditions of extreme weather, fire, pests, diseases and adverse economic conditions. Contracts should include clauses describing the circumstances including force majeure in which failure to perform contract obligations on time, or at all, will not constitute breach of the contract because of temporary or permanent impossibility, together with stipulations that will determine if and when costs will be determined and allocated between the Parties.

#### **Dispute resolution**

20. Contracts should give the Parties an opportunity to resolve any disputes before resorting to arbitration or litigation. Contracts should contain dispute resolution clauses that include, where appropriate, mediation with a mutually agreed mediator. The contract should further state that the mediation process must be complete within 3 months of referral of the dispute, unless

otherwise agreed to in writing by the parties. Parties are entitled to representation in the resolution of disputes.

**Compliance with the laws**

21. Contracts must oblige the Parties to comply with all applicable laws of South Africa including minimum wage, health and safety, and business compliance.

**Freedom of representation**

22. The Parties have the freedom to join any industry, trade and/or representative organisation of their choice.

23. Membership of any industry, trade and/or representative organisation should not prejudice and/or disadvantage the Parties in their negotiations subject to the Competition Act, 89 of 1998.

24. Growers should have the right to representation, in person with the option of a third party advisor, throughout negotiations pertaining to a contract with strategic partner(s).

**Others**

25. The partnership documentation will be written in English but, if necessary and on request by a grower, also in any other official language of the grower preference.