

AMD POSITION PAPER AND PROPOSAL FOR THE CREATION OF THE SADI B-BBEE CHARTER COUNCIL – MAY 2019

1. PURPOSE AND BACKGROUND

- 1.1 In November 2018, the Minister of Trade and Industry, on the advice and recommendation of the Minister of Defence and Military Veterans, gazetted and published the South African Defence Industry (SADI) Charter as a BBBEE Sector Code (Otherwise known as the SADI-SC) in accordance with provisions of Section 9 (1) of the BBBEE Act 53 of 2003 as Amended by Act 46 of 2014. This important development represents a key milestone in the journey towards the transformation of the SADI as the least transformed and least empowered sector in the SA industrial landscape.
- 1.2 The gazette of the SADI-SC means that, as provided for in section 6.1 of the SCOPE OF APPLICATION, it takes precedence over any other BBBEE and/or transformation measurement framework and becomes binding and legally enforceable on all SADI public and private Measured Entities, relevant government & state-owned entities. The gazette followed a lengthy consultative process of drafting amongst all the major commercial key stakeholders in the sector including labour.
- 1.3 The purpose of this document is to propose a framework for the establishment and adoption of the SADI B-BBEE Charter Council, which will act as the overarching forum and executive authority for monitoring and overseeing the implementation and performance of the SADI Sector Code. The B-BBEE Sector Codes provide basic guidelines on this matter but the observations from the lived experiences of most "effective" charter councils is that such councils have to be genuinely representative of stakeholders that are participants in the Council, the Council itself has to be an independent legal entity in the form of an NPO, the secretariat has to be operationalized as part of the NPO and thus the Council has to be funded/resourced for this purpose.

2. TRANSITIONAL ARRANGEMENT

Since the SADI-SC does not make provision for a transitional phase, this means that, as per 1.2 above, the SADI-SC becomes enforceable and binding immediately upon gazette and the date of publishing. This means that the SADI B-BBEE Charter Steering Committee is expected to round up its existence and activities immediately and prepare for the establishment of the SADI Charter Council (SADICC)

Notwithstanding the above, the Steering Committee remains legitimate and relevant in so far as fulfilling of the functions of the SADICC are concern, otherwise any other function that relates to the interpretation of certain provisions of the SADI-SC falls within the ambits and jurisdiction of the National B-BBEE Commission to the extent that it is provided for in the BBBEE Amended Act of 2014.

As per guidelines published by the Department of Trade and Industry in accordance with the provisions of gazette number 38076 - Statement 003, relating to the guidelines and

procedure for developing sector and transformation charters, the establishment of the SADI-CC will be underpinned by the following fundamental principles.

3. **PRINCIPLE 1: MANDATED REPRESENTATION**

Participants and representatives in the Council shall be made up of specifically mandated by the stakeholder in the defence industry. Once mandated, each nominated representative will present their credentials to the MODMV who may request the stakeholder to reconsider their nomination should (s)he have reasonable grounds for objecting to the nominated candidates. Once nominated, mandated and appointed by the MODMV, each Council member will be expected to sign a mandate form and lodge this with the Secretariat of the Council before assuming their responsibilities in the Council.

4. **PRINCIPLE 2: COMPOSITION**

This Council is a legally established entity whose role is to monitor the implementation of the SADI Sector Codes, report periodically on this to the DOD, to resolve disputes in relation to the implementation/interpretation of the Charter and where necessary to refer these to the National B-BBEE Commission for review and adjudication. Additionally, in the context of the SADI, the Charter Council will also be responsible for overseeing the Enterprise Development Fund.

To ensure fair and optimal representation as well as effectiveness of the Council, it is proposed that the Council should be proposed as follows:

- MODMV – Defence Secretariat – Policy Directorate (O) and DMD (O), CPSC (V)
- Armscor – BEE Division (O) and Acquisition Division (V)
- the dti – Ex Officio (O)
- Community – unlike in other industries where various geographic communities are affected by their activities, the most effected community in the context of the SADI this community are the military veterans and to this end it is envisaged that this community will be represented by the DMV as the line function department charged with charged with looking after their interests. This representation will be limited to two (2) members only both of whom will have voting rights in the Council.
- SADI – the SADI in its diversity will be represented by five (5) voting members as nominated via the AMD Board to respectively represent the bigger members (1), SMME's (1) Black owned entities (1), women owned entities (1) and the AMD ED.
- Labour – there are two recognised labour unions in the SADI in the form of NUM and Solidary both of which will each be afforded one (1) voting representative seat in the Council
- Co-opted members – it is foreseen that at the very least, the Council will co-opt at least two (2) additional members to assist it in fulfilling its responsibilities in relation to the SADI Enterprise Development Fund as established under the SADI B-BBEE Charter. These co-opted members will only have voting rights in relation to matters that are their direct areas of interest/specialisation.

Once the members of the Council have been nominated, mandated and appointed, the MODMV shall cause the appointment of the Charter Council to be “promulgated” inside the DOD. [(O) means Observer and (V) means Voter].

5. **PRINCIPLE 3: CHAIRPERSON**

The Council, in its first/inaugural meeting, will consider the expertise and capabilities of each of its members and provide the MODMV with no more than 3 names of candidates to be appointed as the Chairperson of the Council. The MODMV has the prerogative to either accept or reject the candidates as presented for consideration resulting in either an appointment of one of the three candidates of the Council having to resubmit alternative names.

6. **PRINCIPLE 4: FUNDING AND INSTITUTIONALIZATION**

Compliance to the B-BBEE Generic Codes and the various Sector Codes is a legal requirement for which the state should in principle be responsible to enable through reasonable funding and resourcing. To this end, and based on observations of similar arrangements being entered into by other sectors, it is proposed that the MODMV enters into an MOU with the Council for the funding of the Council operational budget for a period of at least three years (19/20; 20/21; and 21/22). During this period, the Council will – within the evolving national framework that is currently being considered by the dti – ensure that a sustainable funding mechanism is established for the operations of the Council including but not limited to possible rebates from the fees paid by entities when their verification as part of the renewal of their B-BBEE certificates.

7. **PRINCIPLE 5: PROCESS AND CONSULTATION**

The process of establishing the SADI B-BBEE Charter Council has to continue and preserve the consultative nature and spirit of the B-BBEE Charter compilation to date. Further, the need to have duly authorised and mandated representative requires that all stakeholders be afforded the opportunity to nominate own representatives. It is thus required that the Steering Committee be directed by the MODMV to engage in the process of securing nominations and availing this to the MODMV who will then formally appoint the Council.

8. **PRINCIPLE 6: GOVERNANCE AND OPERATIONS**

The SADICC shall adopt, as its founding document a Constitution and an MOI that will serve as a governance framework for the operations and running of the affairs of the Council. The governance framework shall make provision for a number of accountable, checks and balance mechanism for reporting and feedback to stakeholders and members of the public.

This shall include, but not limited to a number of governance committees such as:

- 8.1 The Executive Committee – Which shall act on behalf of the Council in its operations and shall seat at least once a month,
- 8.2 The Executive Committee shall have the power and authority to set up a number of governance committees, which shall act as sub-committees of EXCO without any jurisdiction and authority to take binding decisions, that shall report back to it on an ongoing basis. These shall include, but not limited to the following:
 - 8.2.1 Legal, Compliance and Monitoring Committee – which shall adopt its own Terms of Reference relating to the core mandate and functions of the SADICC
 - 8.2.2 Finance, Procurement and Remuneration Committee – which shall report back to EXCO on matters relating to the funding, the operationalization and institutionalization of the Council, including but not limited to recommendations on the acquisition and disposal
 - 8.2.3 Stakeholder Engagement and Supplier Development Committee – shall be charged with all matters related to ensuring that the SADI-SC is understood and supported by all key stakeholders including Verification Agencies, the industry and the procurement officials to mention but a few.