

Social and Ethics Committee	F. Roji-Maplanka Chairman: Social & Ethics Committee	Revision No:	4
	R. Frew Chairman: Board of Directors	Effective date:	5 June 2018

Social and Ethics Committee Terms of Reference

Contents

1.	Constitution	2
2.	Composition	2
3.	Role	3
4.	Mandate in respect of subsidiaries	3
5.	Rights and responsibilities	3
6.	Delegated duties	4
7.	Meetings	5
8.	Proceedings	5
9.	Authority of the Committee	5
10.	Remuneration of Members	6
11.	Review of the Terms of Reference	6
12.	Evaluation of the Committee's Performance	6
	Appendix A: Statutory Duties in respect of Social and Ethics	7
	Appendix B: Content and Emphasis of Committee Meetings	8
	Appendix C: UN – 10 principles	12
	Appendix D: OECD recommendations regarding corruption	16
	Appendix E: The Employment Equity Act ("the Act")	17
	Appendix F: Broad-Based Black Economic Empowerment Act	23

1. Constitution

Section 7(d) of the Companies Act 71 of 2008 (the “Companies Act”), as amended deals with the purpose and application of the Act and states that one of its purposes is to “Reaffirm the concept of the company as a means of achieving economical and social benefits”. The Social and Ethics Committee (“the Committee”) can thus be seen as a mechanism for ensuring that companies monitor and report whether they produce social benefits for the economy, workplace, society and the natural environment.

The Committee, in terms of the Companies Act, is constituted as a statutory committee of the Board of Directors (“the Board”) of MiX Telematics Limited (“the Company” or “the Group”) in respect of its statutory duties in terms of section 72(4) of the Companies Act, read with regulation 43 of the Regulations, 2011, and as a Committee of the Board in respect of all other duties assigned to it by the Board as defined in these terms of reference.

The Committee shall be a standing committee, with the composition and membership reviewed by the Board annually.

The Committee shall report to the shareholders in terms of its statutory responsibilities and to the Board on all other duties assigned to it by the Board.

The deliberations of the Committee do not reduce the individual or collective responsibilities of the Board members with regard to their fiduciary duties and responsibilities, and they must exercise due care, skill and diligence.

These terms of reference, which of subject to the Companies Act, as amended, and the Company’s Memorandum of Incorporation (“MOI”) and any other applicable law or regulatory provision, including the JSE Listings Requirements, have been drafted with due consideration of the King IV Report on Corporate Governance for South Africa, 2016 (“King IV”), and are subject to approval and periodic review by the Board.

2. Composition

The Committee shall be nominated by the Nominations Committee and appointed by the Board and shall comprise of at least three members, the majority being independent non-executive directors.

The members of the Committee as a whole must have sufficient qualifications and experience to fulfil their duties.

The Board shall appoint the Committee Chairman from its members, who shall be an independent non-executive director, and determine the period for which he or she shall hold office.

In the absence of the Chairman, the members present may nominate and elect one of their members to chair the meeting, provided the member is an independent non-executive director.

A quorum of the Committee shall be a majority of members.

The Committee shall nominate a Committee Secretary.

Invitations to attend the Committee meetings shall be extended to:

- the head of Transformation and Human Resources for the South African subsidiaries;
- the Chairman of the MiX Telematics Enterprise BEE Trust; and
- any other senior executives and professional advisors as deemed appropriate.

Individuals in attendance at Committee meetings by invitation, may participate in discussions, but do not vote on resolutions or form part of the quorum

The Committee's performance will be evaluated annually by the Board.

3. Role

The role of the Committee is to ensure that the Group's activities support its intent to be a responsible corporate citizen and to assist the Board in setting the tone for an ethical organizational culture by overseeing the Group's conduct, approach and manner in which the business is conducted with due regard to value creation in society. To achieve this, the Committee will address its statutory requirements and also assess the trends in the industry to identify one or two areas of focus each year.

It must be specifically noted that the Audit and Risk Committee deals with **fraud**. Further, the Audit and Risk Committee deals with risk and sustainability. These matters will continue to be dealt with by the Audit and Risk Committee, which will report to the Committee on these matters. As there may be areas of overlap between the functions of the Audit and Risk Committee and the Social and Ethics Committee, the chairman of the Social and Ethics Committee will be invited to all Audit and Risk Committee meetings, and the Group Chief Financial Officer will have a standing invitation to all Social and Ethics Committee meetings.

Appendix C summarises the 10 principles set out in the United Nations Global Compact Principles.

Appendix D summarises the OECD recommendations regarding corruption.

Appendix E summarises the Employment Equity Act – applicable to South African operations.

Appendix F provides an overview of the Broad-Based Black Economic Empowerment Act – applicable to the South African operations.

4. Mandate in respect of subsidiaries

The Committee is appointed to act on behalf of the Company and its subsidiaries. This authority applies to all the MIX Telematics subsidiaries insofar as it relates to governance best practices and Group-wide ethical standards. The Committee shall act as statutory committee of the South African subsidiaries with a Public Interest score above 500, calculated in terms of the Companies Act. It will act on all matters that are significant for the Group, including as Committee of the Australian and African entities to the extent the laws of the countries are in line with the international laws and governance as contemplated in the UN global compact, as well as OECD rules on corruption.

5. Rights and responsibilities

The Committee shall operate within the Board's delegation of authority.

In discharging its responsibilities to the Board and shareholders, the Committee will:

- oversee and report on organisational ethics, the Group's responsible corporate citizenship, sustainable development and stakeholder relationships, including the approval of a stakeholder engagement strategy; and
- assist the Board to discharge its responsibility with respect to the approval, implementation, and monitoring of policies and practices that facilitate the Group's responsible corporate citizen credentials, thereby ensuring that the Group is operating in a sound and ethical manner.

Responsible Corporate Citizen

- Review and ensure the Group's adoption of the United Nations Global Compact's principles ("UNGC") in the area of human rights, labour, environment and anti-corruption;
- review the Group's policy on anti-corruption in accordance with the OECD requirements;
- review the Group's policy on the promotion of equality and prevention of unfair discrimination in the Group;
- review reports relating to the Group's corporate social responsibilities;
- monitor the risks relating to social and ethics matters;
- monitor the Group's consumer relationships including compliance of the Group's advertising, sponsorship and public relations practices against relevant legislation and Group policy; and
- report back to shareholders on an annual basis.

Duties in respect of inclusiveness, including transformation

- Review and recommend to the Board the targets for B-BBEE contributor level rating for the Group, including scorecard component ranges;
- review and approve the appointment of a verification agency and annually review the reports and certificates issued by the verification agency;
- review the overall budget to facilitate the transformation strategy;
- review the capacity and effectiveness to implement the B-BBEE codes;
- recommend to the Board certain B-BBEE external communications in relation to the transformation strategy;
- monitor the Group's compliance against all relevant legislation, specifically the Employment Equity Act, Skills Development Act and the B-BBEE Act;
- review the Employment Equity plans and reports submitted to the department of Labour;
- review the quarterly progress against the B-BBEE scorecard; and
- review the B-BBEE compliance report for publication on the Group's website.

Duties in respect of employee value creation

- Monitor employees' freedom of association and effective recognition of the right to collective bargaining;
- monitor the Group's standing in terms of the International Labour Organisation Protocol ("ILOP") on decent work and working conditions across the Group;
- monitor the adherence to the Group's ethical standards by employees and other relevant stakeholders through, among others, periodic independent assessments;
- review the impact assessment of the training programme, the Return on Investment (ROI) on learning and development across the Group; and

The emphasis at the meetings shall be directed towards the issues summarised in **Annexure B**.

South African statutory duties in respect of social and ethics are set out in **Annexure A**.

6. Delegated duties

The Committee has delegated certain of its functions to relating to consumer protection laws and health and public safety to the Audit and Risk Committee; and contributions to development of communities and record of donations and charitable giving has been delegated to the individual subsidiaries, who report back to the Group Head Office.

Feedback from these committees on Social and Ethics Committee issues is submitted to the Group Board and/or Social and Ethics Committee, as appropriate.

7. Meetings

The Committee will meet at least three times per year. The Committee Chairman shall report on key matters addressed by the Committee at each Board meeting.

Additional meetings may be held at the request of the Chairman or any member of the Committee or Board as required.

All directors of the Board are entitled to attend the Committee meetings.

Committee papers shall be forwarded to each member of the Committee no fewer than seven days prior to the meeting, other than under exceptional circumstances.

Minutes of Committee meetings shall be distributed timeously.

Member of the Committee shall declare any conflict of interest in respect of matters on the agenda and such declarations will be managed as deemed necessary.

The Chairman (or in his/her absence, an alternative member) of the Committee shall attend the annual general meeting of the Company to report to stakeholders on the Committee's activities.

8. Proceedings

The Committee must establish an annual work plan for each year to ensure that all relevant matters are covered by the agendas of the meetings planned for the year.

The annual work plan must ensure adequate coverage of the matters laid out in in these terms of reference: the more critical matters will be dealt with annually whilst other matters will be dealt with on a rotational basis.

The Committee Secretary shall take minutes of the meetings.

The minutes must be formally approved by the Chairman at the next scheduled meeting and circulated to members of the Committee and to the Board.

9. Authority of the Committee

The Committee shall have the authority to:

- access any information it needs to fulfil its responsibilities;
- seek independent advice at the Company's expense; and
- investigate matters within its mandate.

The Committee shall have the authority to consult with and receive the full co-operation of any employment where necessary to fulfil its responsibilities.

10. Remuneration of Members

Non-executive members of the Committee shall be paid such remuneration in respect of their appointment as recommended by the Board and approved by shareholders. The Chairman of the Committee shall, in addition to his/her remuneration as a member, receive a further sum as recommended by the Board and approved by shareholders.

11. Review of the Terms of Reference

The Committee shall review the Terms of Reference annually, to ensure that they remain consistent with its statutory duties and the Board's objectives and responsibilities. The Terms of Reference may be amended as required, subject to the approval of the Board.

12. Evaluation of the Committee's Performance

The Committee shall ensure that a formal process, as recommended by the Nominations Committee and approved by the Board, is followed for evaluating the performance of the Committee, at least every second year.

Appendix A: Statutory Duties in respect of Social and Ethics

1. To monitor the company's activities, having regard to any relevant legislation, regulations and prescribed legal requirements or prevailing codes of best practice, with regard to matters relating to:
 - 1.1 Social and economic development, including the company's standing in terms of the goals and purposes to:
 - a. the 10 principles set out in the United Nations Global Compact;
 - b. the OECD recommendations regarding corruption;
 - c. the Employment Equity Act; and
 - d. the Broad-Based Black Economic Empowerment Act.
 - 1.2 Good corporate citizenship, including the company's:
 - a. promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - b. contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and
 - c. record of sponsorship, donations and charitable giving.
 - 1.3 The environment, health and public safety, including the impact of the company's activities and of its products or services;
 - 1.4 Consumer relationships including the company's advertising and public relations, compliance with consumer protection laws;
 - 1.5 Labour and employment, including:
 - a. the company's standing in terms of the International Labour Organisation Protocol on decent work and working conditions; and
 - b. the company's employment relationships, and its contribution toward the educational development of its employees.
2. Accept the role of the Social and Ethics Committee for the company and the South African subsidiary companies that are required to have a social and ethics committee in terms of the Act.
3. Draw matters within its mandate to the attention of the Board as occasion requires.
4. Report, through one of its members, to the shareholders at the company's annual general meeting on the matters within its mandate.

Appendix B: Content and Emphasis of Committee Meetings

	March	May	October	Reference
STATUTORY				
Accept the responsibility for the role of the social and ethics committee of subsidiary companies.	X			Co Act
To determine whether the Committee complied with its role for the subsidiaries.			X	Co Act
SOCIAL AND ECONOMIC DEVELOPMENT				
B-BBEE SCORECARD (SOUTH AFRICA)				
Note an update on the B-BBEE scorecard and status report.	X	X	X	Co Act BEE Act
Note the budgets allocated for achievement of B-BBEE targets and plans.			X	ToR
Review and recommend to the Board the corporate targets for the B-BBEE scorecard for the financial year.			X	ToR
Review and approve the appointment of the verification agency, including principles of process and input.	X			ToR
Review the report and certificate from the verification agency.		X		ToR
WORKPLACE INCLUSIVENESS				
South Africa				
Note the year-end quantitative and qualitative progress towards the achievement of employment equity (“EE”) plans in line with the EE Act and the EE plan submitted to the Department of Labour (“DoL”).	X			ToR
Monitor progress and address challenges and barriers in the achievement of EE and disability targets.	X	X	X	ToR

	March	May	October	Reference
Group				
Review talent succession plans for the Group, with due regard to diversity and female representation at senior management levels.			X	BEE Codes Co Act
Confirm that the Group promotes equality and inclusiveness and prevents and eliminates unfair discrimination.	X			Co Act
SKILLS DEVELOPMENT				
South Africa				
Note the Skills Development Plan submitted in line with the Skills Development Act and the report on the contributions towards the educational development of employees.	X			Co Act
Monitor progress against the Skills Development Plan.	X			Co Act
Group				
Review the impact assessment of the training programmes in assisting career development including return on investment on Learning and Development across the Group.			X	Internal
INCOME DIFFERENTIALS				
South Africa				
Review an analysis of the income differentials and the progress to close any gaps.	X			Internal
INCLUSIVE SUPPLY CHAIN TRANSFORMATION				
Review and approve Enterprise Supplier Development (“ESD”) policies, if any.	X			
Review and approve ESD strategies and monitor progress	X			ToR
Review indigenisation and empowerment strategies for those subsidiaries outside of South Africa.	X			Internal

	March	May	October	Reference
SOCIAL ECONOMIC DEVELOPMENT				
Review the Group Social Development report including updates on the contribution to the development of communities and donations and charitable giving across the Group.	X	X	X	
SPONSORSHIPS				
Review sponsorship activity undertaken by the Group.	X			Co Act
EMPLOYEE VALUE PROPOSITION				
Review and monitor the activities of the Group relating to: <ul style="list-style-type: none"> o Freedom of association and recognition to collective bargaining; o terms of the ILOP on decent working conditions; and o the Group’s employment relationships. 			X	Co Act
ANNUAL CULTURE AND CLIMATE SURVEY				
Review the results of the Employment Engagement surveys conducted by the Group.	X			Internal
HUMAN RIGHTS DECLARATIONS				
Confirm the Group supports and respects the protection of internationally proclaimed human rights.	X			Co Act
Confirm the Group is non-complicit in human rights abuses.	X			Co Act
Confirm the Group supports the elimination and abolition of all forms of forced, compulsory and child labour.	X			Co Act
ANTI-CORRUPTION				
Review and monitor the Group’s policy on anti-corruption in line with the OECD recommendations.	X			Co Act

	March	May	October	Reference
CONSUMER RELATIONSHIPS				
Note feedback on the Group’s consumer relationships, including compliance with relevant legislation and Group policy.	X			Co Act
STAKEHOLDER ENGAGEMENT				
Review and approve the Stakeholder Engagement Policy.	X			
Note an update on key stakeholder engagement across the Group (regulators in terms of employment/ consumer relationships/ advertising, etc.)			X	
GOVERNANCE				
Key risk report				
Note the key risk report on social and ethics matters.	X	X	X	King IV
Ethics policies				
Approve, review and monitor the Group’s ethics and related policies.			X	DoA
Terms of reference				
Review the Committee Terms of Reference and recommend changes to the Board for approval.			X	King IV
Annual integrated report				
Review and recommend the Social and Ethics content.	X			DoA
Shareholders meeting				
Approve the Social and Ethics Committee report to be tabled at the Annual General Meeting.		X		DoA
Committee evaluations				
Review the results of the Committee effectiveness evaluation process (every second year).		X 2018 2020		King IV

Appendix C: UN – 10 principles

Abbreviated by A R Welton

Human Rights

1. Principle One – “Businesses should support and respect the protection of internationally proclaimed human rights.”
 - Promoting the rule of law
 - Addressing consumer concerns
 - Value chain management
 - Increasing worker productivity and retention
 - Building good community relationships
 - Respecting human rights

A company cannot compensate for infringing human rights in one aspect of their business by performing good deeds elsewhere, such as through philanthropic acts, supporting human rights in other areas, or by good performance on other issues, such as the environment.

Determining the Scope of Responsibility

Companies should consider three sets of factors in determining the scope of their responsibility to respect human rights:

1. Country and local content in which it is operating for any human rights challenges that context might pose.
2. Consider actual or potential human rights impacts the business’ own activities may have within that context – for example, in their capacity as producers, service providers, employers and neighbours.
3. An analysis of the company’s relationships with government, business partners, suppliers and other non-state actors to consider whether they might pose a risk for the company in terms of implicating it in human rights abuse.

Due Diligence

In order to ensure and demonstrate (ie. to know and show) that a company is meeting its responsibility to respect human rights, it should undertake due diligence. Human rights due diligence is the ongoing process taken to identify, prevent and mitigate negative human rights impacts.

- **A statement of policy (integrated or standalone):** Companies should adopt a statement of policy as a public commitment to fulfil their responsibility to respect human rights, approved by their board or equivalent. It can be a standalone statement or integrated into a broader corporate sustainability policy or code of conduct.
- **Assessing human rights impacts:** Many corporate human rights issues arise because companies do not consider the potential implications of their activities and relationships within their operating context.

- **Integration of human rights policies throughout a company:** The integration of human rights policies throughout a company may be the biggest challenge in respecting human rights.
- **Tracking and reporting performance:** Monitoring and auditing processes permit a company to track ongoing developments.

Another key element of due diligence is having effective company-level grievance mechanisms in place so that employees, contractors, suppliers, local communities and others can raise their concerns and have them considered.

Supporting Human Rights

Supporting human rights involves making a positive contribution to human rights, to promote or advance human rights.

There are at least four ways business can support or promote human rights:

- Through their core business activities in support of UN goals and issues.
- Strategic social investment and philanthropy.
- Advocacy and public policy engagement.
- Partnership and collective action.

Some examples of how companies are supporting and respecting human rights through their daily activities.

- In the workplace by:
 - providing safe and healthy working conditions;
 - guaranteeing freedom of association;
 - ensuring non-discrimination in personnel practices;
 - ensuring that they do not use, directly or indirectly, forced labour or child labour;
 - providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere;
 - having an affirmative action programme to hire victims of domestic violence;
 - making reasonable accommodations for all employees' religious observances and practices; and
 - making reasonable accommodation for disability.
- In the community:
 - by preventing the forcible displacement of individuals, groups or communities;
 - by working to protect the economic livelihood of local communities;
 - by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views of matters that affect their operations, employees, customers and the communities of which they are a part;
 - through differential pricing or small product packages that also enable the poor to gain access to goods and services that they otherwise could not afford;
 - by fostering opportunities for girls to be educated to empower them, which also helps a company to have a broader and more skilled pool of workers in the future; and
 - by, perhaps most importantly, a successful business, which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights.

If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected.

Addressing Human Rights

The topic of human rights can sometimes be challenging for a company to talk about with its managers and employees and/or those outside the company. However, promoting understanding about what human rights are, their relevance to business and what, in practical terms, business can do to address human rights issues can help to make action to respect human rights easier.

Complicit in Human Rights Abuse

2. Principle Two – “Businesses should make sure that they are not complicit in human rights abuses.”

Complicity

Complicity basically means being implicated in human rights abuses that another company, government, individual, group, etc. is causing.

Complicity is generally made up of two elements:

1. An act or omission (failure to act) by a company, or individual representing a company, that “helps” (facilitates, legitimises, assists, encourages, etc.) another, in some way, to carry out a human rights abuse, and
2. The knowledge by the company that its act or omission could provide such “help”.

Complicity can arise in a number of contexts:

- o **Direct complicity** – when a company provides goods or services that it knows will be used to carry out the abuse.
- o **Beneficial complicity** – when a company benefits from human rights abuses even if it did not positively assist or cause them.
- o **Silent complicity** – when the company is silent or inactive in the face of systematic or continuous human rights abuse. (This is the most controversial type of complicity and is least likely to result in legal liability.)

Labour

3. Principle Three – “Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.”
4. Principle Four – “The elimination of all forms of forced and compulsory labour.”
5. Principle Five – “the effective abolition of child labour.”
6. Principle Six – “Eliminate discrimination in respect of employment and occupation.”

Environment

7. Principle Seven – “Business should support a precautionary approach to environmental challenges.”

8. Principle Eight – “Undertake initiatives to promote greater environmental responsibility.”
9. Principle Nine – “Encourage the development and diffusion of environmentally friendly technologies.”

Key Environmental Challenges

- Loss of biodiversity and long-term damage to ecosystems
- Pollution of the atmosphere and the consequences of climate change
- Damage to aquatic ecosystems
- Land degradation
- The impacts of chemicals use and disposal
- Waste production
- Depletion of non-renewable resources

Corruption

10. Principle 10 – “Businesses should work against corruption in all its forms, including extortion and bribery.”

Reasons by businesses should combat corruption

The ethical case – Corruption is inherently wrong.

The business case – There are many reasons why it is in any company’s business interest to ensure that it does not engage in corrupt practices.

- Legal risks
- Reputational risks
- Financial costs

Appendix D: OECD recommendations regarding corruption

Abbreviated by A R Welton

Background

In 2007, the Organisation for Economic Co-operation and Development (OECD) approved a “**Revised Recommendation on Combating Bribery in International Business Transactions**”. This was updated in 2009 – “**Further Combating Bribery**”. This was followed up in 2013 with the “**Anti-Corruption Instruments and the OECD Guidelines for Multinational Enterprises**”.

South Africa signed a ratification of acceptance to the Recommendation in 2007 and published a document – “Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Offices in International Business Transactions”. In this document, there are listed some 10 Acts passed by SA Parliament from 1996 to 2008, which give support to the combating of bribery and under which prosecutions can be effected.

In 2010, the OECD published a paper stating that South Africa should take a more proactive stance in the combating of foreign bribery. It stated that whilst the legislative framework was strong, actions should include:

- Raising awareness of the need to fight foreign bribery in the public and private sectors.
- Boosting law enforcement resources.
- Ensuring that companies engaging in foreign bribery are held liable.

This is the background for inclusion by the legislators in the duties of Social and Ethics Committees of companies.

Actions

The Recommendations in the OECD documents set out what bribery is, that it is to be criminalised and reported on. The Recommendations go further to set out accounting requirements, external audit procedures, internal controls, ethics policies and compliance procedures – all with a view to identifying, preventing and prosecuting bribery.

The MiX Telematics ethics statement clearly sets out what briber and similar non-ethical activities envisaged by the Recommendations are unacceptable. The Committee will liaise with the Audit Committee, which monitors amongst other matters, risk and fraud, to ensure that no cases of bribery and corruption have been identified.

In addition, the Committee will, through the questionnaire process, request information on all instances of bribery and corruption which come to the attention of its officials and which relate to bribery and corruption carried out:

- by the Group’s competitors;
- by the Group’s customers;
- by Group companies.

Appendix E: The Employment Equity Act ("the Act")

Applicable to South African group companies

Prepared by A R Welton and M Seymore

Updated by M Myburgh (August 2016)

Employment Equity Brief

1. Purpose of the Act

The purpose of the Act is to achieve equality in the workplace by:

- promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- implementing affirmative active measures to redress the disadvantages in employment experienced by designated groups, with the aim or target of eventually attaining their equitable representation in all occupational levels in the workforce.

The Act prohibits unfair discrimination, directly or indirectly, against any employee in any employment policy or practice on one or more grounds, including race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth, or on any arbitrary ground.

It is not unfair discrimination to promote affirmative action consistent with the Act, or to prefer or exclude any person on the basis of an inherent job requirement.

It is deemed unfair discrimination if there is a difference in terms and conditions of employment between employees of the same employer performing the same, or substantially the same, work or work of equal value.

The Act also prohibits discriminatory medical and certain psychological testing. Assessments must be within regulation and the use of what is valid and reliable as deemed legally correct is imperative.

2. Duties of the Employer

In order to implement affirmative action measures to achieve employment equity, employers must formulate and facilitate an "Employment Equity Plan". The plan must:

- have objectives for each year of the plan;
- include affirmative action measures;
- take income differentials into account;
- have numeric goals for achieving equitable representation;
- have a timetable for each year;
- have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms;
- task identified persons, including senior managers, to monitor and implement the plan.

Labour inspectors are authorised to conduct an inspection to ensure compliance as provided for in sections 65 and 66 of the Basic Conditions of Employment Act.

If the inspector has reasonable grounds to believe that a designated employer has failed to comply with its obligations in terms of the Act, the inspector will obtain a written undertaking to comply within a specified period.

The Labour Court has the powers to make any appropriate orders, award compensation, or impose fines.

3. **What is MiX Telematics doing**

There is no specific charter governing the MiX Telematics business sector. The Company's South African subsidiaries are required to, and do, submit annual Employment Equity reports detailing targets and measuring our performance against previous targets set. These are based on existing structures and realistic planning.

The South African subsidiaries have, in the past, set unrealistic targets and has had certain negative results. In addition, the actions of management have also resulted in "skewed" representation of the various race groups in relation to the Economically Active Population of the country required in the Act. This is especially true at junior, middle, senior and executive management. The matter will be addressed in the Employment Equity Plan which will be monitored on the intervals indicated in the Plan.

Summary of the Employment Equity Act, 55 of 1988 (relevant sections only)

1. **Chapter 1 – Definitions, purpose, interpretation and application**

1.1 **Purpose of the Act: Section 2**

The purpose of the Act is to achieve equality in the workplace, by:

- a. promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- b. implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational levels in the workforce.

1.2 **Application of the Act: Section 4**

- a. Chapter 2 (sections 5 – 11) applies to all employers and employees.
- b. Chapter 3 (sections 12 – 27) applies to all designated employers.
- c. A designated employer means an employer who employs 50 or more employees, or has a total annual turnover as reflected in Schedule 4 of the Act.
- d. A designated group means black people, women, or people with disabilities who:
 - o are citizens of South Africa by descent; or
 - o became citizens by naturalisation –
 - before 27 April 1994, or

- after 26 April 1994 and who would have been entitled to acquire citizenship prior to the date, but who were precluded by apartheid policies.

(Foreign nationals, or persons who became citizens after April 1994, will not assist an employer to meet numerical employment equity targets – aligns with the definition to the Broad-Based Black Economic Empowerment Act 2013.)

2. Chapter 2 – Prohibition of Unfair Discrimination

- 2.1 No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice, on one or more grounds including race, gender, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, and birth, or any other arbitrary ground.
- 2.2 It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.
- 2.3 Medical Testing: Section 7
 - a. Medical testing of an employee is permissible only when legislation requires testings, or when this is justifiable for various reasons.
 - b. HIV testing is prohibited unless such testing is determined to be justifiable by the Labour Court.
- 2.4 Psychological Testing: Section 8

Psychological testing and similar assessments are prohibited, unless the test is scientifically valid and reliable, can be applied fairly to all employees, and is not biased against any employee or group.
- 2.5 Dispute concerning this Chapter: Section 10
 - a. An employee, or applicant for employment, may refer a dispute concerning alleged unfair discrimination (or medical or psychological testing) to the CCMA for conciliation. This must be done within six months of the alleged discrimination (or testing).
 - b. If a dispute is not resolved at conciliation, a party may refer it to the Labour Court for adjudication. The parties to a dispute may also agree to refer the dispute to arbitration.
 - c. Unfair dismissal disputes in which unfair discrimination is alleged, must be dealt with in terms of the Labour Relations Act. The dismissal must be referred to the CCMA within 30 days.

3. Chapter 3 – Affirmative Action

- 3.1 Duties of a Designated Employer: Section 13
 - a. A designated employer must implement affirmative action measures for designated groups to achieve employment equity.
 - b. In order to implement affirmative action measures, a designated employer must:
 - o consult with employees;
 - o conduct an analysis;
 - o prepare an employment equity plan; and

- report to the Director-General on progress made in the implementation of the plan.

3.2 Affirmative Action Measures: Section 15

- a. Affirmative action measures are measured intended to ensure that suitably qualified employees from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels of the workforce.
- b. Such measures must include:
 - identification and elimination of barriers with an adverse impact on designated groups;
 - measures which promote diversity;
 - making reasonable accommodation for people from designated groups;
 - retention, development and training of designated groups (including skills development); and
 - preferential treatment and numerical goals to ensure equitable representation. This excludes quotas.
- c. Designated employers are not required to take any decision regarding an employment policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people not from designated groups.

3.3 Consultation: Sections 16 and 17

A designated employer must take reasonable steps to consult with representatives of employees representing the diverse interests of the workforce on the conducting of an analysis, preparation and implementation of a plan, and on reporting to the Director-General.

3.4 Disclosure of Information: Section 18

To ensure meaningful consultation, the employer must disclose relevant information to the consulting parties, subject to section 16 of the Labour Relations Act 66 of 1995.

3.5 Analysis: Section 19

A designated employer must conduct an analysis of employment policies, practices, procedures, and working environment so as to identify employment barriers that adversely affect members of designated groups. The analyst must also include the development of a workforce profile to determine to what extent designated groups are under-represented in the workplace.

3.6 Employment Equity Plan: Section 20

A designated employer must prepare and implement a plan to achieve employment equity; which must:

- have objectives for each year of the plan;
- include affirmative action measures;
- have numerical goals for achieving equitable representation;
- have a timetable for each year;
- have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms; and
- identify persons, including senior manager to monitor and implement the plan.

3.7 Report: Section 21

- a. An employer who employs fewer than 150 employees must submit its first report to the Director-General within 12 months after the commencement of the Act, and thereafter every 2 years on the first working day of October.
- b. An employer who employs 150 or more employees, must submit its first report 6 months after the commencement of the Act, and thereafter every year on the first working day of October.

3.8 Designated employer must assign a manager: Section 24

A designated employer must assign one or more senior managers to ensure implementation and monitoring of the employment equity plan and must make available necessary resources for this purpose.

3.9 Income differentials: Section 27

A statement of remuneration and benefits received in each occupational level of the workforce must be submitted by a designated employer to the Employment Conditions Commission (ECC).

Where there are disproportionate income differentials, a designated employer must take measures to reduce it progressively. Such measures may include collective bargaining, compliance with sectoral determinations (section 51 of the Basic Conditions of Employment Act); the application of norms and benchmarks recommended by the ECC; relevant measures containing in skills development legislation; and any other appropriate steps.

4. **Chapter 5 – Monitoring, Enforcement and Legal Proceedings**

4.1 Monitoring: Section 34

Employee or trade union representatives can monitor contraventions of the Act and report to relevant bodies.

4.2 Powers of the Labour Inspector: Section 35

Labour inspectors are authorised to conduct an inspection as provided for in sections 65 and 66 of the Basic Conditions of Employment Act.

4.3 Undertaking to Comply: Section 36

If the inspector has reasonable grounds to believe that a designated employer has failed to comply with its obligations in terms of the Act, the inspector will obtain a written undertaking to comply within a specific period.

4.4 Compliance Order: Section 37

If the designated employer refuses to comply with the written undertaking, the inspector will issue an order to comply.

4.5 Review by Director-General: Section 43

The Director General may conduct a review to determine whether an employer is complying with the Act. On completion of the review, the Director-General may make recommendations for compliance within certain time frames.

4.6 Powers of the Labour Court: Section 50

The Labour Court has the powers to make appropriate orders, award compensation, or impose fines.

4.7 Protection of Employee Rights: Section 51

The Act protects employees who exercise their rights and obligations under the Act against victimisation, obstruction and undue influence.

5. **Chapter 6 – General Provisions**

5.1 State Contracts: Section 53

Designated employers and employers who voluntarily comply with Chapter 3, who seek to do business with any organ of state, will have to apply for a certificate from the Minister confirming their compliance with Chapters 2 and 3 of the Act. Non-designated employers' compliance certificates will pertain to Chapter 2.

5.2 Liability of Employers: Section 60

Should employees contravene any provision of this Act, while performing their duties, the employer will be liable unless the employer can prove that it did everything in its power to prevent the undesired act.

Appendix F: Broad-Based Black Economic Empowerment Act

Applicable to South African group companies

Prepared by A R Welton and M Seymore

Updated by M Myburgh (August 2016)

The Act and Revised Codes of Good Practice

The Broad-Based Black Economic Empowerment Act, No 46 of 2013 (“BEE Amendment Act”), which amends the Broad-Based Black Economic Empowerment Act, No 53 of 2003 (“BEE Act”), makes the BEE Act the overarching legislation in South Africa with regard to BEE. The BEE Amendment Act makes provision for a number of changes, of which the most important to take note of is the fact that it makes it mandatory for all government bodies to apply the generic BEE Codes of Good Practice or other relevant code of good practice, gazetted in terms of the BEE Act, when procuring goods or services, or issuing licenses, or other authorisations under any other laws, and to penalise fronting or misrepresentation of BEE information. The BEE Amendment Act came into force and effect on 24 October 2014. The so-called trumping provision contained in s3(2) became effective on 24 October 2015, being the date which is one year after the rest of the BEE Amendment Act came into force. The trumping provision means that any legislation which contains its own BEE provisions will have to instead defer to the BEE Act and codes of good practice, and the organs of state or public entities issuing licenses or authorisations, or procuring goods or services in terms of such legislations, will be compelled to apply the BEE Act and applicable code of good practice, instead of the BEE provisions set out as such.

The Revised Codes of Good Practice (“RCoGP”) came into effect on 1 May 2015 and the implementation of the Codes is supported by the BEE Amendment Act 46 of 2013. The revision of the Codes of Good Practice on B-BBEE is a reflection of some of the actions and behaviours over a period of approximately seven years, which has been both good and bad, and provides business with an indication of how the Department of Trade and Industry views the progress made to date. The purpose of the Act is to promote black economic empowerment, inclusive of women, workers, youth, people with disabilities, people living in rural areas and military veterans through diverse but integrated socio-economic strategies. In the latest amendment of the Revised Codes of Good Practice, the number of elements has been reduced from seven to five. Management Control is combined with Employment Equity, and Enterprise and Supplier Development with Preferential Procurement. The five elements are – ownership, management control, skills development, enterprise and supplier development (incorporating preferential procurement) and socio-economic development.

The RCoGP further identifies priority pillars that companies should comply with, namely:

- Ownership;
- Skills development; and
- Enterprise and supplier development.

Failure to comply with a 40% sub-minimum in any of these priority pillars automatically leads to a reduction of one level in the company’s contribution level.

Furthermore, the Employment Equity and Skills Development pillars use the EAP (Economically Active Population) racial split to ensure that there is equitable representation based on these statistics.

The new RCoGP has the following objectives aligned with the five pillars:

- Ownership – increase the percentage share of economic benefits of Black South Africans in the company.
- Management Control – increase the representation in board decision-making, executive, senior, middle and junior management, and the employee base.
- Preferential Procurement – procurement from empowering suppliers as a portion of total procurement spend relative to B-BBEE level, size, and black ownership.
- Enterprise and Supplier Development – support of black-owned (51%), small and micro suppliers to enable their development.
- Skills Development – execute practical work-based learning of black people (not only employees, and including the unemployed), measured as a ratio of headcount.
- Skills Development – execute certified/accredited training of black people (not only employees, and including the unemployed), measured as a ratio of training spend to payroll.
- Socio-Economic Development – address grass roots economic access issues, such as health for future employees and future customers.

The five pillars are given a relative weighting. The relative weightings for the Generic Scorecard:

- Equity Ownership – 25%
- Management Control – 19%
- Skills Development – 20%
- Enterprise and Supplier Development, including preferential procurement – 40%
- Socio-Economic Development – 5%

Empowering Supplier

The Codes of Good Practice referred to a Value Adding Supplier; that has now been replaced by a new term, namely that of an empowering supplier. An empowering supplier within the context of B-BBEE, is a B-BBEE compliant entry, which is:

- A good citizen South African entity, complying with all regulatory requirements of the country (tax, EE, WSP, Seta, BEE); and
- meets the following criteria:
 - at least 25% of cost of sales, excluding labour costs and depreciation, must be procured from local producers in SA; for the service industry, labour costs are included but capped to 15%;
 - job creation – 50% of jobs created are for Black people, provided that the number of Black employee since the immediate prior verified B-BBEE measurement is maintained;
 - at least 25% of transformation of raw material/beneficiation which includes local manufacturing, production and/or assembly, and/or packaging;
 - skills transfer – spend at least 12 days per annum of productivity deployed in assisting Black EME (turnover less than R10m) and QSE (turnover R10m to R50m) beneficiaries to increase their operation or financial capacity; and
 - at least 85% of labour costs should be paid to South African employees by service industry entities.

Large/generic enterprises should meet at least three of the above.

Fronting

With the inclusion of the amendments, the Act now states that it is a criminal offence for any person to knowingly engage in a fronting practice. Companies and employers could face criminal prosecution for fronting as black economic empowerment entities, if found guilty by the BEE Commission. The penalty for fronting is a fine, up to ten years' imprisonment, or both. If the offender is an enterprise and not a natural person, it could be subject to a fine of up to 10% of its turnover. In addition, a person or company convicted of fronting will also be disqualified from contracting or transacting with any organ of state or public entity for a period of ten years.

The definition of "fronting practice" in the BEE Act is broad and means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act, or the implementation of any of the provisions of this Act, including but not limited to practice in connection with a B-BBEE initiative. These could be:

- In terms of which Black persons who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise.
- In terms of which the economic benefits received as a result of the broad-based economic empowerment status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation.
- Involving the conclusion of a legal relationship with the black person for the purpose of that enterprise achieving a certain level of Broad-Based Black Economic Empowerment compliance without granting that black person the economic benefits that will reasonably be expected to be associated with the status or position held by that black person. Or,
- Involving the conclusion of an agreement with another enterprise in order to achieve or enhance the broad-based economic empowerment status in which –
 - there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;
 - the maintenance of business of operation is reasonably considered to be improbable, having regard to the resources available; and
 - the terms and conditions were not negotiated at arms' length, and on a fair and reasonable basis.

BEE Commission

The amendments to the Broad-Based Black Economic Empowerment Act of 2003 now makes provision for the creation of a BEE Commission to, amongst other things:

- oversee, supervise and promote adherence with the BEE Act in the interest of the public;
- receive complaints relating to BEE;
- investigate, either on its own initiative or in response to complaints received, any matter concerning BEE; and
- promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of BEE.

The Commission may issue non-binding opinions on the interpretation of any provision of the BEE Act. In addition, it may make a finding as to whether any BEE initiative involves a fronting practice, and lastly, it may institute proceedings

in a court to restrain any breach of the BEE Act, including any fronting practice, or to obtain appropriate remedial relief.

If the Commission is of the view that any matter it has investigated may involve the commission of a criminal offence in terms of the BEE Act or any other law, it must refer the matter to the National Prosecuting Authority or an appropriate division of the South African Police Service. The Commission is also entitled to refer a matter to the South Africa Revenue Services (SARS) or to any other regulatory authority, if it is of the view that the provisions of relevant legislation have been breached.

Enterprise Size's Effect on B-BBEE

In terms of the BEE Amendment Act and RCoGP, all enterprises in South Africa are divided into one of three categories:

- Generic Enterprises (turnover greater than R50 million – all five pillars are applied to calculate the Scorecard).
- Qualifying Small Enterprises (turnover between R10 million and R50 million).
- Exempted Micro Enterprises (turnover less than R10 million).

Exempted Micro Enterprises (EME) with more than 51% Black Ownership are automatically Level 2 contributors and only need an affidavit.

Non-black owned EMEs are automatically Level 4 contributors, and only need an affidavit.

QSEs with more than 51% Black Ownerships are automatically Level 2 contributors, and only need an affidavit.

Non-black owned QSEs are to be audited on a separate scorecard and have to comply with one empowering supplier criteria.

Industry Specific Measurement

Companies may choose to be measured using the Generic Scorecard (as described above and created by the government) or their individual sector scorecards. Various sector scorecards have been put in place and are in the process of being aligned with the RCoGP, namely the Forest Sector Code, MAC (Media, Advertising and Communication) Sector Code, Agri-BEE Charter, Information and Communication Technology Charter, Property Sector Charter and Integrated Transport Sector Code. The Tourism Sector Code has already been amended, whilst the Construction Sector Code and Chartered Accountant Sector Code have been repealed. Industry scorecards are created to address industry specific issues and complications with regard to implementing B-BBEE.

Consequences of Rating or No Rating

A good B-BBEE rating has become a tool to business access in South Africa.

Obtaining a B-BBEE rating is costly, but the greater cost is not in obtaining the B-BBEE rating itself, but in the actions that the enterprise has to implement in order to gain the points, such costs amounting to at least 4% of the annual net profit after tax (NPAT) and a percentage of the leviable amount:

- 6% of the leviable amount on skills development
- 2% of NPAT on supplier development
- 1% of NPAT on enterprise development
- 1% of NPAT on socio-economic development (CSI)

Verification and B-BBEE Certificates

SANAS (South African National Accreditation System) and IRBA (Independent Regulatory Body for Auditors) have been mandated as the accreditation and assurance bodies for verification agencies. This accreditation has been put in place in order to ensure the consistency of the independent verification of B-BBEE contributions. BEE certificates can only be issued by SANAS and IRBA approved verification agencies.

The certificate can only be issued once a full verification has been performed.

For information purposes only (not to be included as part of final document):

Public Interest Score

Regulation 26(2) of the Companies Act stipulates how it's calculated.

It's basically calculated as follows:

- a number of points equal to the average number of employees of the company during the financial year;
- one point for every R1 million (or portion thereof) in third party liability of the company, at the financial year end;
- one point for every R1 million (or portion thereof) in turnover during the financial year; and
- one point for every individual who, at the end of the financial year, is known by the company-
- in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
- in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.

The why or what it means:

A Public Interest Score is calculated for all companies. As set out in Regulations 26(2), 27-30, 43, 127 and 128 of the Companies Act, the Public Interest Score determines:

- Which financial reporting standards apply to a company;
- Whether a company should be audited or independently reviewed in the public interest;
- Whether a company must file a copy of its annual financial statements with the CIPC;
- Whether a company requires a Social and Ethics Committee; and
- The size of the company for purposes of appointing a Business Rescue Practitioner.