

BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

EXPLANATORY NOTICE 1 OF 2017

SUBMISSION OF DOCUMENTS IN REGISTERING A MAJOR B-BBEE TRANSACTION

A. Introduction

1. The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is an entity established by the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 (“the Act”), to oversee the implementation of the Act, which includes provision of explanatory notices outlining the procedures of the Act to guide the public.
2. Section 13F(1)(f) of the Act requires the B-BBEE Commission to maintain a registry of major broad based black economic empowerment (“B-BBEE”) transactions, above a threshold determined by the Minister by notice in the Gazette. Regulation 18 in Part 5 of the B-BBEE Regulations of 2016 outlines the process for registration of a major B-BBEE transaction.
3. On 9 June 2017, the Minister of Trade and Industry issued Notice No. 551 in Government Gazette No. 40898 (“*Notice*”) which determines the threshold for registering a B-BBEE transaction.
4. In terms of the *Notice*, the documents required to be submitted for the registration of the major B-BBEE transaction must be in accordance with the requirements of the B-BBEE Commission.

5. This Explanatory Notice is issued in terms of section 13F(3)(b) to guide the parties/entities regarding the documents to be submitted in registering major B-BBEE transactions to comply with the requirements of the B-BBEE Act.

B. *What is a major B-BBEE Transaction?*

6. In the *Notice* the Minister has limited the threshold to the ownership element of the Codes of Good Practice, with the exclusion of the Statement 103 which deals with recognition of equity equivalents for multinational, thereby limiting the scope to ownership deals.
7. A major B-BBEE transaction therefore refers to any transaction between entities/parties that results in ownership recognition in terms of Statement 100, the value of which equals or exceeds twenty-five million rands (R25 million).
8. The threshold is based on the value of the transaction excluding administration, professional and legal fees. For Statement 102, the value of the transaction means the value of the sale of asset/business/equity instrument.
9. The main benefit of the register for B-BBEE transactions is that it will allow for monitoring of compliance, levels of transformation and extent to which benefits of the major B-BBEE transactions flow to the black persons that are part of these deals in compliance to the objectives of the B-BBEE Act.

C. *Who must register the major B-BBEE transaction?*

10. In terms of regulation 18 of the B-BBEE Regulations, a party that enters into a major B-BBEE transaction that is above the threshold determined by the Minister in the *Gazette* shall, within **fifteen (15)** days of concluding the major B-BBEE transaction, submit the major B-BBEE transaction to the B-BBEE Commission in the prescribed **FORM B-BBEE 18** to comply with section 13F (1) (f) of the Act. This means major B-BBEE transactions concluded from 09 June 2017 must be registered within fifteen (15) day.
11. The Minister has limited the threshold to ownership transactions but excludes equity equivalent transactions for multinationals, and has extended the registration obligation to all transactions concluded between 24 October 2014 and 8 June 2017, to be registered

with the B-BBEE Commission within **sixty (60)** calendar days counting from 09 June 2017.

12. The *Notice* further states that multiple parties/entities involved in the major B-BBEE transaction must register the transaction as a collective with the B-BBEE Commission. The B-BBEE Commission is of the view that this is aimed at avoiding multiple registration of the same major B-BBEE transaction by parties/entities involved separately.
13. The B-BBEE Commission may, on registration of a major B-BBEE transaction by any of the parties/entities involved, request a letter of authority to be submitted as proof of authority to register the transaction on behalf of parties/entities.

D. *What documents are required for registering a major B-BBEE Transaction?*

14. The parties/entities submitting a major B-BBEE transaction to the B-BBEE Commission for registration must complete and submit **FORM BBEE 18** as prescribed.
15. The party submitting must in line with sub-regulation 8(4) of the B-BBEE Commission ensure that he/she provides to the B-BBEE Commission his/her legal name, address for service, telephone number, email address and fax number if available, and if the person is not an individual, the name of the person authorised to deal with the B-BBEE Commission on the matter.
16. The *Notice* states that the parties/entities involved in the major B-BBEE transaction must submit documents for the registration of the major B-BBEE transaction according to the requirements prescribed by the B-BBEE Commission.
17. The B-BBEE Commission therefore requires the following documents to be submitted with the **FORM BBEE 18** in registering the major B-BBEE transaction:
 - 17.1 Brief description of the major B-BBEE transaction;
 - 17.2 Copy of a signed Sale Agreement, or similar agreement transferring shares/interest/assets/business, as the case may be, from one party/entity to another;

- 17.3 Copy of a signed Shareholders' Agreements, or similar agreement governing the relationship between holders of interest, in respect the major B-BBEE transaction;
 - 17.4 Copy of signed trust deeds, if the ownership structure of the major B-BBEE transaction includes a trust;
 - 17.5 Copy of a signed financing agreement relating to the transaction, irrespective of whether or not it was vendor financed;
 - 17.6 Copy of a schematic diagram of the ownership structure before and after the conclusion of the major B-BBEE transaction;
 - 17.7 Copy of a valid B-BBEE Certificate or a B-BBEE Sworn Affidavit, as the case may be, of the measured entity involved in the major B-BBEE transaction; and
 - 17.8 Any document that the parties/entities deem relevant to the transaction.
18. All the above referred to documents must be submitted for the certificate of registration to be issued by the B-BBEE Commission.
 19. Where any of the documents required is/are not applicable to the major B-BBEE transaction being registered, the parties/entities must indicate so in the submission.
 20. The party registering the major B-BBEE transaction must send the information for registration to the B-BBEE Commission through any of the channels below:

By hand: 420 Witch-Hazel Avenue, Eco-Glades 2 Block C, Eco-Park, Centurion

By Post: Private Bag X84, Pretoria, 0001

By Email: mramare@beecommission.gov.za

E. Conclusion

21. The B-BBEE Commission is committed to meeting the timelines set for issuance of registration certificates and providing speedy feedback to parties/entities, where necessary. However, this depends on the parties/entities following the process fully, and providing the relevant documents as required.
22. The B-BBEE Commission may request additional information from the parties/entities in order to properly execute its mandate in terms of this process, and where necessary, a meeting may be held with the parties/entities.

23. The B-BBEE Commission is committed to ensuring that the Act is implemented in a manner that is consistent to achieve the objectives of B-BBEE which should bring about an inclusive economy for all.

24. The B-BBEE Commission will ensure that it communicates any changes to the procedure outlined in this Explanatory Notice for Submission of documents in registering a major B-BBEE transaction. For any queries or clarification, the B-BBEE Commission must be contacted immediately.

Issued by the B-BBEE Commission

13 June 2017

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