

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

EXPLANATORY NOTICE 02 OF 2024

PROCEDURE FOR REQUESTING A NON-BINDING OPINION FROM THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

A. *Introduction*

1. In terms of section 13F(3) Broad Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 (“the Act”) the Broad-Based Black Economic Empowerment Commission (the Commission) must increase knowledge of the nature and dynamics and promote public awareness of matters relating to broad-based black economic empowerment (B-BBEE).
2. One of the ways in which the B-BBEE Commission delivers on the abovementioned mandate is by providing guidance to the public by issuing of non-binding opinions on the interpretation of any provision of the Act as directed by the provisions of section 13F(3)(b)(ii) of the same Act.
3. This Explanatory Notice replaces Explanatory Notice 01 of 2016 effective from date of issue.

B. *What an Opinion entails*

4. An Opinion is a written view of the Commission’s position in respect of a set of facts submitted by any member of the public. The Opinion’s aim is to assist in interpreting provisions of the Act and to provide the public with guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices implemented in relation to the promotion of adherence to the B-BBEE Act, which includes the Codes of Good Practice and B-BBEE Regulations
5. An Opinion as per the Act is not binding on the Commission for the reason that the Commission may at any time review its position vis-à-vis the facts presented. Furthermore, the Commission will only formulate an opinion on the basis of a disclosed set of facts

accompanied by relevant documents, to enable the B-BBEE Commission to understand the matter fully. Should the facts change in any way, the Commission may revise its position.

6. The ultimate goal by the Commission Opinions is to enhance the level of understanding of the Act, and to ensure that it is applied consistently by all members of the public to achieve the objectives of B-BBEE as outlined in section 2 of the Act. Based on the the frequency, nature or the significance of an issue raised in requests for Opinions, the Commission may issue a Practice Guide on the specific issue, which will be publicised on its website to provide guidance to all other stakeholders.

C. *The process to request an Opinion*

7. To obtain an Opinion, the requester must write a formal letter of request for an Opinion to the Commission outlining the facts of the matter in question. The requester must ensure that the matter is presented in a manner that is clear and understandable, which will assist with efficiency and enable the Commission to provide the Opinion as quickly as possible.
8. In line with sub-regulation 8(4) of the B-BBEE Regulations of 2016, the requester must ensure that the letter includes the requestor's legal name, address for service, telephone number, email address, fax number, and if the person is not an individual, the name of the person authorised to deal with the B-BBEE Commission on the matter.
9. The requester is required to submit relevant documents relating to the matter, such as shareholders' agreements, trust deeds, memorandum of incorporation, proposals, funding or financing model, organograms or organisational structures, for the B-BBEE Commission to fully understand the request. These documents may be drafts or final versions. No Opinion will be issued in the absence of supporting documents.
10. The requester may choose to disclose the names of the parties involved in the matter, but where the parties are presented as anonymous, a proper description and labeling of each party is required to enable the B-BBEE Commission to understand each party's role in the matter.
11. An Opinion will be issued specifically to the person that requested it, and will not be made available to any other person. The Commission will treat each Opinion in accordance with the

confidentiality provisions in section 13L of the Act, read with regulation 13 of the B-BBEE Regulations of 2016.

12. The requester must send the letter requesting an Opinion to the B-BBEE Commission:

By hand: **the dtic** Campus, 2nd Floor, Block E, 77 Meintjies Street, Sunnyside, Pretoria

By Post: Private Bag X84, Pretoria, 0001

By Fax: +27 12 394 2535

By Email: MRamare@beecommission.gov.za

D. Timelines for processing and issuing an Opinion

13. Once the request for an Opinion is received, the Commission will within five (5) days acknowledge the request and issue a case number to the person that submitted the request for an opinion in accordance with regulation 8 of the B-BBEE Regulations of 2016, and every subsequent correspondence in respect of this matter must be marked with the allocated case number.
14. The B-BBEE Commission will endeavor to issue an Opinion within thirty (30) days of issuing the case number, and in the event that the matter is more complex, the period may be extended, after informing the requesting party in writing.
15. A party may respond to the Opinion issued by the Commission, and the Commission will within 30 days also attend to the response and any subsequent correspondence.
16. The B-BBEE Commission may within 30 days of considering the Opinion request elect to hold a formal meeting with the requester as part of the assessment of the set of facts presented and the documents submitted to the B-BBEE Commission relating to the matter.

E. Charging of Fees

17. In terms of sub-regulation 9(2) of the B-BBEE Regulations of 2016, the B-BBEE Commission may charge reasonable fees for services rendered by its office consistent with the Act and those Regulations, which includes a fee for provision of Opinions.

18. The Commission must publish a schedule of fees by notice in the Gazette, after consultation with the Minister of Trade, Industry and Competition.
19. The B-BBEE Commission has not yet published a schedule of fees for this service, and it is currently provided for free. Such a schedule of fees, once determined in accordance with the Regulations, will be published as required, including on the website.

E. Conclusion

20. The B-BBEE Commission is committed to meeting the timelines it sets for providing Opinions. However, this depends on the requester providing full details, in a clear and understandable manner, and where necessary attaching relevant documents. For instance, in respect of ownership structures, a schematic diagram is recommended to simplify the flow.
21. 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 and growing economy for all.
22. The B-BBEE Commission's powers and discretions under the Act, including its powers to investigate complaints, are not affected by the process of issuing the Opinion on any specific matter. Therefore, the Opinion process must not be used to determine merit for any complaint lodged or to be lodge with the Commission.
23. Parties considering concluding a major B-BBEE transaction are encouraged as guided by sub-regulation 18(6) of the B-BBEE Regulations of 2016 to seek an Opinion prior to concluding the transaction.
24. The B-BBEE Commission will ensure that it communicates any changes to the procedure outlined in this Explanatory Notice.

Issued by the B-BBEE Commission

September 2024