

## **BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION**

### **EXPLANATORY NOTICE 01 OF 2024**

#### **SUBMISSION OF DOCUMENTS IN REGISTERING A MAJOR B-BBEE TRANSACTION**

##### **A. Introduction**

1. The Broad Based Black Economic Empowerment Commission (“the 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. A Major B-BBEE transaction means a transaction that must be registered with the Commission in terms of section 13F(1)(f) of the Act, above a threshold determined by the Minister of Trade, Industry and Competition (“the Minister”) 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. The main benefit of the registry of Major B-BBEE transactions is to allow for monitoring B-BBEE ownership 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 with the objectives of the B-BBEE Act.
4. This Explanatory Notice is issued in terms of section 13F(3)(b)(i) of the Act to guide the parties/entities regarding the process and documents to be submitted in registering a Major B-BBEE transaction to comply with the requirements of the B-BBEE Act, including regulation 18 of the B-BBEE Regulations of 2016.

5. This Explanatory Notice replaces Explanatory Notice 1 of 2017 effective from date of issue.

**B. *What is a Major B-BBEE transaction?***

6. On 9 June 2017, the Minister issued Notice No. 551 in Government Gazette No. 40898 (“*Notice*”) which determines the threshold for registering a Major B-BBEE transaction.
7. In terms of the *Notice*, a Major B-BBEE transaction refers to any transaction as per Code Series 100 (includes Statement 102) which transaction value equals or exceeds twenty-five million rands (R25 million). The threshold value 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.
8. A Major B-BBEE transaction excludes transactions initiated in terms of the Statement 103 which deals with recognition of equity equivalent investment programme for multinational companies.

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

9. In terms of regulation 18 of the B-BBEE Regulations of 2016, parties/entities that enter 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 Commission in the prescribed **FORM B-BBEE 18** to comply with section 13F(1)(f) of the Act.
10. The determination of the 15 days is after the parties have signed all the governing agreements to the transaction, irrespective of whether or not certain conditions attached to the transaction have been fulfilled or not. However, should the transaction not be executed due to non-fulfilment of the set conditions, the parties/entities that submitted the transaction for registration must inform the Commission in writing regarding the status of the transaction.
11. Multiple parties/entities involved in the Major B-BBEE transaction must register the transaction as a collective with the Commission, so as to avoid multiple registration of the same Major B-BBEE transaction by parties/entities involved separately.

12. The Commission will accept registration of a Major B-BBEE transaction by any of the parties/entities involved with a letter of authority by the other parties/entities as proof of authority to register the transaction on behalf of a collective.
13. Where the value of the transaction is below R25 million and the parties/entities voluntarily seek to register such a transaction in order to allow for the Commission to execute its mandate in terms of section 13F(1)(a) of the Act, the process outlined in this Explanatory Notice read with regulation 18 of the B-BBEE Regulations of 2016 will be applied.

**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 B-BBEE 18** as prescribed.
15. The parties/entities submitting the transaction for registration must in line with sub-regulation 8(4) of the B-BBEE Regulations of 2016 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 Commission on the matter.
16. The *Notice* stated that the parties/entities must submit documents for registration of a Major B-BBEE transaction documents in accordance with the requirements of the B-BBEE Commission. The Commission therefore requires the following documents to be submitted with the **FORM B-BBEE 18** in registering the Major B-BBEE transaction:
  - 16.1 Letter of authority or any similar proof that the party/entity registering the Major B-BBEE transaction is authorised by the other parties/entities to the Major B-BBEE transaction to register for the collective;
  - 16.2 Brief Description of the Major B-BBEE transaction;
  - 16.3 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;
  - 16.4 Copy of a signed Shareholders' Agreements, or similar agreement governing the relationship between holders of interest, in respect the Major B-BBEE transaction;

- 16.5 Copy of signed trust deeds, if the ownership structure of the Major B-BBEE transaction includes a trust;
  - 16.6 Copy of a signed financing agreement relating to the transaction, irrespective of whether or not it was vendor financed;
  - 16.7 Copy of the valuation report prepared for the purpose of determining the value of the Major B-BBEE transaction;
  - 16.8 Copy of the Schematic Diagram of the ownership structure before and after the conclusion of the Major B-BBEE transaction, including the full ownership breakdown of parties/entities contributing towards the black ownership recognition;
  - 16.9 List of shareholders of the measured entity after the conclusion of the Major B-BBEE transaction, indicating the percentage of each shareholder, class of shares, and clearly reflecting black shareholders on the list;
  - 16.10 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;
  - 16.11 Any document that the parties/entities deem relevant to the transaction; and
  - 16.12 Where a document mentioned above is not applicable to the Major B-BBEE transaction, the parties/entities need to indicate so in writing as part of the brief description of the transaction.
17. All the above referred to documents must be submitted for a certificate of registration to be issued by the Commission.
  18. The parties/entities registering the Major B-BBEE transaction must send the information to the Commission through any of the channels below:
    - 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](mailto:MRamare@beecommission.gov.za)

**E. Timelines for processing and registering a Major B-BBEE transaction**

19. Upon receipt of the documents for registering a Major B-BBEE transaction, the Commission will within five (5) days acknowledge the request and issue a case number to the person that submitted the transaction 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.
20. The B-BBEE Commission will proceed to issue the certificate of registration (**FORM B-BBEE 19**) to the parties/entities that submitted the transaction for registration within ten (10) days provided the requirements for registration are met.
21. Where parties/entities submitted incomplete information for registration of a Major B-BBEE transaction, the Commission will following acknowledgement of the transaction inform the parties/entities of such, and grant them five (5) days to submit the outstanding information, failing which the transaction registration submission will be rejected in writing.
22. The Commission must be notified of any material change to the B-BBEE element of the entity occurring after a Major B-BBEE transaction has been registered, if such material change meets the threshold for registration of a Major B-BEE transaction.
23. A list of registered Major B-BBEE transactions will also be published on the Commission's website from time to time, without violating the confidential nature of the information submitted by the parties/entities.

**F. Confidentiality claim**

24. Parties/entities providing information for registering a Major B-BBEE transaction may request the Commission to treat such information in whole or part as confidential information in line with the requirements of section 13L(1)-(3) of the Act, read with sub-regulation 13(1)(a) and (c)(ii) of the B-BBEE Regulations of 2016.

**G. Charging of Fees**

25. In terms of sub-regulation 9(2) of the B-BBEE Regulations of 2016, the B-BBEE Commission may charge reasonable fees for services it has rendered consistent with the Act and those Regulations, which includes a fee for registering a Major B-BBEE transaction.

26. The Commission must publish a schedule of fees by notice in the Gazette, after consultation with the Minister.
27. 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.

#### **H. Conclusion**

28. The Commission is committed to meeting the timelines set for the issuance of the certificate of registration 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.
29. Please note that the Commission may request reasonable additional information in writing 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.
30. Parties considering concluding a Major B-BBEE transaction are encouraged to seek, as guided by sub-regulation 18(6) of the B-BBEE Regulations of 2016, an Opinion prior to concluding the transaction.
31. The 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.

Issued by the B-BBEE Commission

20 August 2024