

BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION

EXPLANATORY NOTICE 2 OF 2017

SUBMISSION OF INFORMATION IN RELATION TO A B-BBEE COMPLIANCE REPORT (EFFECTIVE 1 APRIL 2018)

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 B-BBEE Commission to guide the public.
2. Section 13F(1)(g) of the Act requires the B-BBEE Commission to receive and analyse reports prescribed in section 13G, concerning broad-based black economic empowerment compliance by organs of state, public entities and private sector enterprises. Regulation 12 in Part 2 of the Regulations regulating the administration and implementation of the Broad-Based Black Economic Empowerment Act and the functions of the B-BBEE Commission of 2016 (“B-BBEE Regulations”) outlines the process for submitting B-BBEE compliance reports.
3. This Explanatory Notice is issued in terms of section 13F(3)(b) to guide the reporting party /entity regarding the documents to be submitted when submitting a B-BBEE compliance report to comply with the requirements of the Act. This Explanatory Notice will be effective from **1 April 2018** and will be applicable on all reports submitted from then onwards.

B. What is a B-BBEE Compliance Report?

4. A B-BBEE Compliance Report is a comprehensive outlook on how a measured entity implements the broad-based black economic empowerment as guided by requirements of the codes of good practice (the Codes). The main benefit of these reports is for the B-BBEE Commission to monitor broad-based black economic empowerment compliance both in the public and private sector, including the levels of transformation and extent to which benefits of economic transformation accrue to the black persons benefiting from various broad-based black economic empowerment initiatives in compliance to the objectives of the Act.

C. Who must submit a compliance report?

5. In terms of Section 13G, read with regulation 12 of the B-BBEE Regulations:
- a) All spheres of government, public entities and organs of state must report on their compliance with broad-based black economic empowerment in their audited annual financial statements and annual reports required under the Public Finance Management Act, 1999 (Act No. 1 of 1999) within thirty (30) days post approval of such annual report and financial statements in a prescribed B-BBEE 1 Form.
 - b) All public companies listed on the Johannesburg Stock Exchange must in a prescribed B-BBEE 1 Form provide to the B-BBEE Commission, in such manner as may be prescribed, a report on their compliance with broad-based black economic empowerment 30 days' post approval of annual reports and financial statements or ninety (90) days after end of the financial year of the listed entity, irrespective of whether it is primary or secondary listing.
 - c) All Sectoral Education and Training Authorities contemplated in the Skills Development Act, 1998 (Act No. 97 of 1998), must report on skills development spending and programmes to the B-BBEE Commission 30 days' post approval of annual reports and financial statements or 90 days after end of the financial year of the Sectoral Educating Training Authorities in a prescribed B-BBEE 2 Form.

D. What is required for submitting a compliance report?

6. The measured entity submitting a broad-based black economic empowerment compliance report to the B-BBEE Commission must complete and submit the prescribed form obtainable from the gazetted B-BBEE Regulations on the B-BBEE Commission's website www.bbbee.commission.co.za
7. The B-BBEE Commission therefore requires the following information to be submitted with the prescribed form as outlined in the matrix (**attached**):
 - 7.1 Letter of authority or any similar proof that the person submitting the B-BBEE compliance report is authorised by the measured entity to submit the report if not submitted by the Chief Executive Officer or similar accounting authority or officer;

Ownership and Management Control Element

- 7.2 Percentage of black shareholder, number of directors/managers for each category, race classification, gender, age, location and disability indication.
- 7.3 Indicate dividends declared.

Skills Development Element

- 7.4 Number of black persons trained per race classification, gender, age, location, disability indication, disability and value thereof.

Enterprise and Supplier Development Element

- 7.5 Number of all black owned EMEs/QSEs enterprise and supplier development entities assisted and value thereof.

Socio Economic Development Element

- 7.6 Number of black participants, race classification, gender, geographical location and value thereof.
8. All the referred information, including any document that the reporting party/entity deem relevant to the compliance report must be submitted to enable the B-BBEE Commission.

9. Where any of the information required is not applicable the reporting party/entity must indicate so in the submission.
10. The party submitting the report must send the information 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

11. The B-BBEE Commission is committed to meeting the timelines set for analysing and providing speedy feedback to parties/entities, where necessary. However, this depends on the party following the process fully, and providing the relevant information as required.
12. The B-BBEE Commission is committed to ensuring that the Act is implemented in a manner that is consistent to achieve the objectives of broad-based black economic empowerment which should bring about an inclusive economy for all. Thus, it may request reasonable additional information from the reporting party/entity in order to properly execute its mandate in terms of this process, and where necessary, a meeting may be held with the party/entity.
13. In the case of non-compliance with the Act, the B-BBEE Commission shall notify the sphere of government, public entity, the organ of state, listed company or Sectoral Education and Training Authority in writing by issuing the prescribed **FORM B-BBEE 3** of the apparent non-compliance and require such entity to correct its report and comply with the requirements of section 13G within thirty (30) days.
14. In the event the entity fails to comply as contemplated in section 13(G) of the Act, the B-BBEE Commission must -
 - 14.1 Reject the report by issuing the prescribed **FORM B-BBEE 4**; and
 - 14.2 Indicate the reasons for rejecting the report, and the sphere of government, public entity, organ of state, listed company or Sectoral Education and Training Authority must then be considered to have not complied with the requirements of the Act.

15. The B-BBEE Commission may allow the sphere of government, public entity, organ or state, listed company or Sectoral Education and Training Authority that submitted the report in terms of section 13G of the Act to appear before the B-BBEE Commission in a closed or open meeting to respond to questions by the B-BBEE Commission as part of the consideration of the report, and take advice where necessary.
16. If upon consideration of the report submitted in terms of section 13G, the B-BBEE Commission is of the view that the report complies with the requirements of the Act, the B-BBEE Commission must notify the entity concerned in a prescribed **FORM B-BBEE 5**, in accordance with sub-regulations (1), (3) and (5) of regulation 12 of the B-BBEE Regulations.
17. Any misrepresentation of information submitted in the report required in terms of section 13G by a sphere of government, public entity, organ or state, listed company or Sectoral Education and Training Authority shall be dealt with in terms of the Act.
18. The B-BBEE Commission may conduct a site visit to verify the correctness of the information submitted in the report or initiate an investigation in terms of section 13J (1) of the Act in respect of any non-compliance with the requirements of section 13G of the Act.
19. The B-BBEE Commission will ensure that it communicates any changes to the procedure outlined in this Explanatory Notice for complying with Section 13G of the Act. For any queries of clarification, the B-BBEE Commission must be contacted immediately.

Issued by the B-BBEE Commission

20 December 2017

B-BBEE Commission
Private Bag X84
Pretoria
0001

Telephone: +27 12 649 0918

Email: mramare@beecommission.gov.za