

## B-BBEE COMPLIANCE REPORTS

The **Broad-Based Black Economic Empowerment Act 53 of 2003** as amended by **Act 46 of 2013** (hereinafter referred to as the Act) requires all spheres of government, public entities, organs of state, public companies listed on the JSE and all Sectoral Education and Training Authorities (SETA's), as contemplated in the 1998 Skills Development Act, to submit B-BBEE Compliance Reports to the B-BBEE Commission on an annual basis.

On 20 December 2017, the B-BBEE Commission however issued an Explanatory Notice in accordance with the Act, section 13F(3)(b), to assist companies regarding the documents required in terms of the annual submission of their B-BBEE Compliance Reports. This Explanatory Notice is effective from 01 April 2018 and will be applicable on all reports submitted thereafter.

It is important to note that a B-BBEE Compliance Report reflects in detail how a company implements B-BBEE in accordance with the applicable Codes and/or Sector Codes and this in turn, assists the B-BBEE Commission in monitoring levels of transformation and the extent to which it benefits Black people who are benefitting from various B-BBEE initiatives in compliance to the objectives of the Act.

Compliance with B-BBEE needs to be reported on as follows:

1. All spheres of government, public entities and organs of state need to include details of their B-BBEE compliance in their Audited Financial Statements and/or Annual Reports within 30 days of its approval.
2. All public companies listed on the JSE (irrespective of whether it is a primary or secondary listing), need to report on their compliance either:
  - i. Within 30 days of approval of their Audited Financial Statements and/or Annual Reports OR
  - ii. Within 90 days of the listed entity's financial year end period.
3. All SETA's must report on Skills Development spending and programmes either:
  - i. Within 30 days of approval of their Audited Financial Statements and/or Annual Reports OR
  - ii. Within 90 days of the SETA's financial year end period.

To submit a B-BBEE Compliance Report, the specific reporting template, made available by the B-BBEE Commission, needs to be completed (i.e. the B-BBEE 1 Form needs to be completed by all spheres of government, public entities, organs of state and public

companies listed on the JSE, whereas the B-BBEE 2 Form needs to be completed by all SETA's).

Once submitted, the B-BBEE Commission will within 5 days acknowledge receipt of the report in writing and following a 90-day period of analysis and consideration, liaise with the reporting company on its compliance with the Act. The B-BBEE Commission may also request additional information from the reporting company in order to properly execute its mandate and if need be, conduct a site visit with the reporting company to verify the correctness of the information submitted in the report or to initiate an investigation in terms of the Act.

The B-BBEE Commission will notify reporting companies of their compliance with the Act and if found non-compliant, the said reporting company will need to correct its report within 30 days as failure to comply, will result in the reporting company's report being rejected.

In closing it should be noted that the B-BBEE Commission may publish the reports in any manner it deems appropriate. As such, reporting companies need to take notice of section 13L of the Act which states that when submitting information to the B-BBEE Commission, a person may claim that all or part of that information is confidential however this said claim must be supported by a written statement explaining why the information is confidential.

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