

Increasing disclosure for B-BBEE claims

A new Explanatory Notice issued by the B-BBEE Commission in January requires more supporting evidence for BBEE claims. Although this may seem onerous, it will strengthen the Commission's ability to make recommendations for improvement.

By [Candice Meyer](#) 16 Feb 2021



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There has been little sustainable transformation in the South African economy. This has necessitated measures to enhance transparency and accountability in relation to transformation. South African companies need to move from compliance box-ticking in the B-BBEE verification process to a qualitative assessment of implementation of measures and their outcomes, ensure sustainable economic transformation.

In line with this goal, the B-BBEE Commission has issued a third guideline, Explanatory Notice 1 of 2021, entitled *Guidelines for Completing the Compliance Matrix for Submission of a Compliance Report in terms of section 13G(1) and (2) of the B-BBEE Act*. It follows two previous guidelines, Explanatory Notices 02 of 2017 and 01 of 2018, respectively.

The legislative framework

Section 13G of the B-BBEE Act requires government, public entities and organs of state to report on their compliance with B-BBEE in the audited financial statements and annual reports required under the Public Finance Management Act, No. 1 of 1999.

Public companies listed on the Johannesburg Stock Exchange must report to the B-BBEE Commission on their B-BBEE compliance using the prescribed form.

B-BBEE Regulation 12 specifies annual compliance reporting duties. It requires a report by the above entities to the B-BBEE Commission on their verified state of compliance with the key elements of B-BBEE: ownership, management control, skills development, enterprise and supplier development and socio-economic development. They must also report on any other sector specific element, as well as the extent to which each element contributes to the entity's scorecard.

The B-BBEE Commission will consider the report within 90 days of receipt and highlight areas of improvement, if any. If the entity is not compliant with the B-BBEE Act, the B-BBEE Commission will notify it, and require the filed report to be

corrected and the entity to comply with the requirements of section 13G of the B-BBEE Act within 30 days. If the entity fails to comply with section 13G of the B-BBEE Act, the B-BBEE Commission will reject the report, indicating reasons for the rejection. The B-BBEE Commission may allow the non-compliant entity to appear before it for a private or open meeting, to respond to questions from the B-BBEE Commission as part of the consideration of the report, or to take advice from the B-BBEE Commission.

Section 10(4) of the B-BBEE Act requires enterprises which operate under Sector Codes published under section 9 of the B-BBEE Act to report to the relevant Sector Council annually on the state of their B-BBEE compliance. The sector charter councils report to the Minister of Trade and Industry on the state of compliance. The Minister submits these sector charter council reports to the B-BBEE Commission, which will respond to the Minister on the state of compliance and any required improvements.

Explanatory Notices

Explanatory Notice 02 of 2017 sets out a compliance matrix to be completed by entities (in addition to Form B-BBEE 1), a part of the required annual compliance report. It requires that each category of each measured element (percentage; number; race classification; gender; age; location; and disability, of black persons) must be specified, accompanied by a relevant document, when filing the mandatory compliance report.

Explanatory Notice 01 of 2018 confirms that the main purpose of compliance reports is to monitor B-BBEE compliance in public and private sectors for the extent and speed of transformation, as well as the extent to which black persons benefit economically from broad-based schemes. This Explanatory Notice requires that annual financial statements should include B-BBEE performance as a section with reference to the annual report forming part of "B-BBEE Compliance Performance Information". It expands on Explanatory Notice 02 of 2017 and requires disclosure of the value of benefits accrued to black persons.

Explanatory Notice 01 of 2021, *Guidelines for Completing the Compliance Matrix for Submission of a Compliance Report in terms of section 13G(1) and (2) of the B-BBEE Act*, only provides guidance to government, public entities, organs of state and JSE-listed companies for completing the compliance matrix for their annual report. It does not guide Sectoral Education Training Authorities, but the prior two Explanatory Notices do.

The reporting metrics in the 2021 explanatory notice include those of the prior notices as discussed above and drill further into detail around procurement, including identities of B-BBEE-compliant suppliers, their B-BBEE status, ownership, nature of procurement and total spend with each entity. Procurement support for exempted micro enterprises and qualifying small enterprises is also highlighted, as in Explanatory Notice 01 of 2018.

The compliance matrix is intended to enable the B-BBEE Commission to determine the extent of B-BBEE implementation, that it can effectively measure the levels of transformation within the context of B-BBEE.

The B-BBEE Commission stated that if a reporting entity fails to provide the information outlined in the reporting matrix, it will contravene the B-BBEE Act and the annual B-BBEE compliance report is likely to be rejected.

The burden vs benefit

The extent of the detail now required to be provided in the annual compliance report has grown significantly since the initial compliance matrix was published by the B-BBEE Commission under Explanatory Notice 02 of 2017. The market has complained that these additional reporting obligations are onerous and unclear, particularly in relation to the status of B-BBEE compliance of JSE-listed companies.

Explanatory Notice 01 of 2021 stipulates that,

“ where the categories in question have been claimed by the measured entity on its scorecard, the information must be

provided as that information must be readily available as supporting evidence of the claims. ”

It stands to reason that entities which have been formally verified for B-BBEE compliance would have evidence supporting their claims to their verification agents, upon which their scorecards are based. That evidence should be readily available submission with the compliance matrix in the annual compliance report.

What is challenging is that some of the detailed information, which now apparently must be included in the compliance report, does not have to be verified during the formal verification process. That means it may not be readily available. One example is mandated investments, where the black-ownership breakdown is not known. An entity may only record a score zero in the compliance matrix for: geographical location, youth, women or people with disabilities, if it does not claim any BBEE points under the related category on its scorecard.

The B-BBEE Commission provides an additional check on transformation of entities through this compliance reporting process, arguably supplementing the audit function of verification agencies. Through the compliance reporting process, the B-BBEE Commission is able to draw out transformation trends in the market across each measured element, drilling into demographic detail. It can report on these trends and make recommendations for improvement at entity and market level.

The benefits of transparency afforded to the B-BBEE Commission through the detailed compliance reporting process, beyond the verified scorecard which only reports key measurables, far outweigh the added administrative responsibility imposed on entities by the reporting duties under the expanded compliance matrix.

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