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# BLACK ECONOMIC EMPOWERMENT ALERT

## IN THIS ISSUE

### THRESHOLD FOR MAJOR B-BBEE TRANSACTIONS PUBLISHED FOR COMMENT

The Minister of Trade and Industry published the proposed threshold for major B-BBEE transactions by way of Notice 748 of 2016 in the Government Gazette on 8 November 2016.

# THRESHOLD FOR MAJOR B-BBEE TRANSACTIONS PUBLISHED FOR COMMENT

*Section 14(1) of the B-BBEE Act empowers the Minister to make regulations requiring all broad-based Black Economic Empowerment transactions above a prescribed threshold to be reported to the Commission.*

*Notice 748 of 2016 provides that all major B-BBEE ownership transactions, which equal or exceed R100 million, calculated by either combining the annual turnover of both entities or their asset value, must be registered with the B-BBEE Commission.*



**The Minister of Trade and Industry published the proposed threshold for major B-BBEE transactions by way of Notice 748 of 2016 in the Government Gazette on 8 November 2016.**

Section 14(1) of the B-BBEE Act empowers the Minister to make regulations requiring all broad-based Black Economic Empowerment transactions above a prescribed threshold to be reported to the Commission. In terms of the Regulations to the B-BBEE Act, which were published on 6 June 2016, the parties to a major broad-based black economic empowerment transaction must submit the transaction to the B-BBEE Commission for registration within 15 business days after concluding the transaction. While the regulations specify that the requirement to register is not a requirement to obtain the B-BBEE Commission's approval, the regulations nevertheless provide that the B-BBEE Commission can advise the parties of any concerns that the B-BBEE Commission has regarding the transaction, and that the parties must then take steps to address the B-BBEE Commission's concerns. If adequate steps are not taken, the B-BBEE Commission can then initiate an investigation in terms of the B-BBEE Act into the transaction.

Notice 748 of 2016 provides that all major B-BBEE ownership transactions, which equal or exceed R100 million, calculated by either combining the annual turnover

of both entities or their asset value, must be registered with the B-BBEE Commission. The provision is not clear and raises several questions including:

- (1) Are the two entities which are referred to the BEE shareholder and the entity in which it has acquired the interest?
- (2) How does this apply in the context of complex structures where the transaction is done at a higher level but for the benefit of entities lower down the chain?
- (3) Why isn't the threshold determined with reference to the value of the transaction to the BEE shareholder as opposed to the combined asset value or turnover of entities?
- (4) Shouldn't the threshold also refer to a minimum percentage shareholding that the BEE shareholder should have?

By failing to refer to a percentage shareholding and combining the assets values and turnovers of two entities, there is potentially a far broader pool of transactions that will be required to be registered than anticipated.

# THRESHOLD FOR MAJOR B-BBEE TRANSACTIONS PUBLISHED FOR COMMENT

CONTINUED

*Members of the public have 30 days from date of publication of Notice 748 of 2016 to submit comments in writing to the DTI on the contents of the Notice.*

Notice 748 of 2016 goes a step further and also requires that B-BBEE ownership transactions concluded on or after 24 October 2014, being the proclamation date of the B-BBEE Act, 2003, as amended; but before the final publication date of this Notice, which equal or exceed the R100 million threshold, must be registered with the B-BBEE Commission within 30 days of the final publication date of the Notice. It

is questionable whether the Minister has the power to make the registration requirement retrospective to the date of determination of the threshold.

Members of the public have 30 days from date of publication of Notice 748 of 2016 to submit comments in writing to the DTI on the contents of the Notice.

*Verushca Pillay*

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