

REPORTING BEE TRANSACTIONS



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On 9 June 2017, the Department of Trade & Industry published a notice requiring all parties involved in major B-BBEE transactions

to register the transaction with the B-BBEE Commission within 15 days of concluding the transaction. In addition, major B-BBEE transactions concluded between 24 October 2014 and 8 June 2017 must be registered within 60 calendar days counted from 9 June 2017.

The notice states that a major BEE transaction is one where the transaction value equals or exceeds R25 million.

Although the notice does not expressly clarify the position, it would appear that the threshold of R25 million applies to the entire transaction value as opposed to the BEE component of the transaction. This is evident from the statement made in the notice that “for Statement 102, Transaction Value means the value of the sale asset / business / equity instrument.”

The obligation to register is imposed not only on the empowerment investor but every person “involved” in the transaction. Thus, the banks, in some cases, attorneys and other

parties connected to the transaction may be caught by this obligation.

It is also unclear as to what is meant by a major B-BBEE transaction.

The B-BBEE Codes and the BEE Act do not define a B-BBEE transaction let alone a major B-BBEE transaction.

The notice states that a B-BBEE transaction is a “transaction between entities / parties that results in ownership recognition in terms of Statement 100 of the Codes”.

Statement 100 of the Codes is simply a statement which sets out and prescribes the principles which are to apply in measuring BEE ownership and how points are allocated. It would seem that the notice contemplates that if a transaction would involve the allocation of BEE points under Statement 100 of the Codes, then this is a BEE transaction.

Thus, the situation may arise where a transaction, if measured under Statement 100, results in the allocation of a score for ownership, even if not material, would require registration provided the transaction value equals or exceeds R25 million.

The B-BBEE Commission have clarified that registration must be done by the completion of a form BBBEE18 accompanied by a description of the transaction, a copy of the transaction agreements, finance agreements where applicable, a schematic diagram of the structure and any other relevant documents. These

documents must be submitted before a certificate of registration is issued by the Commission. The Commission is entitled to request additional information and call for a meeting between the parties with a view to ensuring that the principles behind the B-BBEE Act are achieved.

It follows that contracting parties to empowerment transactions may now be forced to structure the transaction in a manner acceptable to the Commission. This may include complying with conditions that extend beyond the Codes themselves.

The notice is vague and does not achieve what is obviously the intended objective. The monetary threshold set out in the notice should have applied to the BEE element of the transaction and not the entire transaction. In addition, a B-BBEE transaction should be defined as a transaction whereby BEE investors acquire a material percentage in ownership of a business or company as opposed to a minor or immaterial percentage.

By defining a broad based black economic empowerment transaction as being almost any transaction involving black people, even if insignificant, we believe the Minister has exceeded the powers conferred upon him under the B-BBEE Act. ■

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INTRODUCING COX YEATS COMMERCIAL & NATURAL RESOURCES LAW TEAM

Michael Jackson is the Managing Partner at Cox Yeats Attorneys and head of the Commercial & Natural Resources Law Team. His specialist practice areas are Business Law, Corporate Mergers & Acquisitions, Natural Resources & Energy, and Empowerment & Transformation. Michael is a member of the International Bar Association and is listed in both the guide to the World’s Leading Natural Resource Lawyers and the World’s Leading Energy Lawyers.

Over the last seven years, Cox Yeats has assembled a commercial team of lawyers comprising six partners, three associates and a number of candidate attorneys. This is an optimal size unit for the Team’s specialisation in the merger, acquisition, amalgamation and restructuring space.

This Cox Yeats team is now possibly the largest grouping of skilled professionals in KwaZulu-Natal which focuses on this area and which also has expertise in:

- Corporate Finance
- Corporate Advisory
- Competition Law
- Empowerment and Transformation
- Natural Resources and Energy
- Dispute Resolution
- Mergers, acquisitions, Amalgamations and Restructuring

The Team has a particular focus on the mining, sugar, banking, manufacturing, agribusiness,

telecommunications, logistics, recycling, and timber sectors.

Cox Yeat’s professionals have, either individually or collaboratively, written numerous leading publications in areas of their expertise, one of which is the “Guide to Mergers and Acquisitions in South Africa”, published in 2016 by LexisNexis.

Although lawyers traditionally defend their autonomy and individualism, Cox Yeats actively promotes and balances this with team work and joint effort.

Jackson says, “We strive to understand our clients’ operations and the detail of the legal landscape in which they navigate. We view client relationships as long term commitments. Our preferred approach is to build relationships and rapport, which allows clients to be confident with our legal grounding and ability to offer pragmatic commercial solutions.”

The Commercial Team members are: Michael Jackson, Managing Partner; Simon Watson, Partner; Jenna Padoa, Partner; Keren Watson, Partner; Jason Goodison, Partner; Wade Ogilvie, Associate; Chereese Thakur, Associate; Spencer Cason, Associate; Benjamin Meadows, Candidate Attorney; Xola Madikizela, Candidate Attorney. ■

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