August 14, 2020

How is SA progressing in terms of B-BBEE? Feedback from the B-BBEE Commission

The Broad-Based Black Economic Empowerment (B-BBEE) Commission released its annual report on the National Status and Trends on B-BBEE on 29 July 2020 for the 2019 calendar year.

This report is normally released in the first quarter of each financial year but was delayed slightly due to the Covid-19 national lockdown and is now available on *www.bbbeecommission.co.za*.

The purpose of this blog is to highlight the salient points from this annual report.

Who is the B-BBEE Commission?

The B-BBEE Commission was established by section 13B of *B-BBEE Act 46 of 2013* to oversee, supervise and promote adherence to the Act in the interest of the public.

The B-BBEE Commission is an entity of the Department of Trade, Industry and Competition which issues this report based on entities whose B-BBEE certificates were uploaded to the B-BBEE Commission Certificate Portal for the year under review, and to track how the country is performing against the scorecard set in the Codes of Good Practice.

Section 13G of the B-BBEE Act makes it compulsory for all JSE-listed entities, organs of state, public entities and sector education and training authorities (SETAs) to submit compliance reports on B-BBEE to the Commission on a yearly basis.

Highlights of what the Commission said

The Commission held a webinar on 29 July 2020 where it indicated that B-BBEE priority elements are the key drivers for economic growth, which is needed to address the high levels of unemployment in SA. Failure to comply may result in referral for prosecution as *"this worrying trend of non-compliance is clearly undermining the objectives of the B-BBEE Act".*

"*The low level of reporting and the slow pace of improvement in B-BBEE elements is a concern, but the commission welcomes that … compliance is now part of the audit scope of the auditor-general, and also that annual B-BBEE reporting is a listing requirement on the JSE,*" the Commission said.

"Therefore, with these interventions and the enforcement action of the commission, reporting and the extent of … implementation is expected to improve."

- The Commission added that it had started conducting site visits in respect of the reports submitted as part of the verification process. "The lack of black women and black male representation at board level is highlighted as a barrier to transformation of the JSE-listed entities," the Commission said.
- It further stated that an intervention such as the government's *Youth Employment Service programme,* which focuses on grooming black managers above the age of 35, should be considered to accelerate transformation.
- Furthermore, the Commission said in its report that it may be beneficial to look into an integrated model where a percentage is levied on entities that do not comply with the skills development target. The levy would be paid into the National Student Financial Aid Scheme fund to fund free education. *"Through amendments in the codes, this amount can be potentially directed to reduce the current fiscal challenge in funding free tertiary education",* said the Commission.

What are the elements of concern?

Skills Development is rightfully identified as a priority element. The conclusion in the report states: *“Whilst targets are high and whilst many companies struggle to achieve these targets, the emphasis should increasingly be on the nature and quality of training interventions in addition to the quantity thereof.”*

Most entities may have achieved their highest points under the Socio-Economic Development element; however, there is a need for Verification Agencies to strengthen the verification process by requiring qualitative measures such as initiative needs analysis and monitoring and evaluation criteria. *This would further ensure that real objectives of socio-economic development are met within the context and parameters of B-BBEE.*

What are the possible solutions?

During the webinar and in conclusion to the report, it was mentioned that the B-BBEE Commission must continue to conduct awareness sessions to educate the measured entities about the importance of compliance and reporting requirements to improve adherence to the B-BBEE Act.

- The B-BBEE Commission must enforce submission of B-BBEE compliance report by the SETAs, organs of state and JSE-listed entities through a legal process under the B-BBEE Act to address non-compliance. Where penalties are provided for, these should be enforced, including imposition of fines.
- The B-BBEE Commission has started conducting site visits to verify the accuracy of the reports submitted and to identify best practices to share with other measured entities. Also, preparations to refer measured entities that failed to submit reports are underway as their conduct is not only a violation of the B-BBEE Act but also enables the harbouring of fronting arrangements.

Conclusion

For the Commission to succeed in its mission to facilitate the accelerated productive implementation of the B-BBEE Act, it must be applied consistently by both the private and public sector, particularly in regard to section 10 and section 13G of the B-BBEE Act, which are mandatory.

SERR Synergy assists businesses to implement viable B-BBEE initiatives and ensure alignment of initiatives with the legal requirements of the B-BBEE Codes.

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