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What are the B-BBEE ownership challenges that multinational companies are faced with?

When multinational companies do business in South Africa, Broad-Based Black Economic Empowerment or B-BBEE is one of their biggest challenges, with the Ownership element being the greatest obstacle, mainly due to a global practice/policy that limits the Sale of Equity.

The result of having no black Ownership is that a multinational will lose out on B-BBEE scorecard points which, in turn, adversely affects their B-BBEE level. The multinational is also penalised with one B-BBEE level, as they do not comply with the priority element of Ownership.

What is the Equity Equivalent Investment Programme (EEIP)?

In recognising the above challenges, the Department of Trade and Industry (DTI) published *The Recognition of Equity Equivalents for Multinationals* as an alternative to the direct sale of equity (Statement 103, gazetted on 6 May 2015). *The Codes therefore make provision for exchanging the Ownership element with the Equity Equivalent Investment Programme (EEIP).* However, a multinational may only consider the EEIP if it can prove the existence of a global practice/policy that limits the sale of equity in any foreign country where the multinational trades. Such a practice/policy should have been in place before the promulgation of B-BBEE legislation in 2003.

An EEIP is a programme that promotes Enterprise and Supplier Development, Research and Development, as well as Critical and Core Skills within the South African economy.

The EEIP process requires a multinational to apply to the Minister of Trade and Industry for exemption from the Ownership element based on its monetary contribution to a transformation fund approved by the Minister.

The multinational should make the following contribution to the EEIP to be exempted from the Ownership element:

- 25% of the net asset value of its South African operation; or
- 4% of total revenue from its South African operations.

The investment periods are set out as follows:

- Contributions of more than R100 million can be considered for an investment period of up to 10 years;
- Contributions of between R75 million and R100 million can be considered for an investment period of up to 7 years;
- Contributions of between R50 million and R75 million can be considered for an investment period of up to 5 years;
- Contributions of less than R50 million can be considered for an investment period of up to 3 years.

The EEIP Ownership Points Certificate will be valid for the agreed investment period.

In conclusion

The opportunity that the EEIP provides the multinational to obtain a competitive B-BBEE Certificate must be weighed against the enormous financial implications of such a programme. There are also other ownership options that may be more viable for multinational entities, such as the sale of productive assets to a black-owned enterprise to achieve ownership recognition. The sale of assets in exchange for ownership will be dealt with in a follow-up blog.

As industry leaders, *SERR Synergy assists both local and multinational companies with a variety of Ownership solutions which differentiates us from the rest.*

About the Author: Rachéll van Staden is a Project Manager who joined SERR Synergy in July 2016 in the Pretoria B-BBEE Department. She obtained her BCom Law and LLB degree from the University of Pretoria and is also an admitted attorney, conveyancer and notary.