

BROAD-BASED BLACK ECONOMIC EMPOWERMENT

EXPLANATORY NOTICE 1 OF 2016

PROCEDURE FOR REQUESTING A NON-BINDING ADVISORY OPINION

A. Introduction

1. Section 13F(3)(b) of the Broad Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 ("the Act") requires the B-BBEE Commission to increase knowledge on the nature and dynamics and promote public awareness on matters relating to broad based black economic empowerment ("B-BBEE").
2. The B-BBEE Commission does this by providing guidance through issuing explanatory notices outlining its procedures, issuing non-binding advisory opinions on the interpretation of any provision of the Act or applying to a court for a declaratory order on the interpretation or application of any of the provisions of the Act. This document is therefore an Explanatory Notice on the procedure for requesting an Advisory Opinion.
3. In terms of Regulation 9 of the B-BBEE Regulations of 2016, the B-BBEE Commission may charge reasonable fees for services rendered by its office, including a fee for provision of Advisory Opinions.
4. The B-BBEE Commission has not yet published a schedule of fees for this service, and it is currently provided for free. Such a schedule of fees, once determined in accordance with the Regulations, will be published as required, including on the website.

B. What an Advisory Opinion entails

5. An Advisory Opinion is a non-binding written view or opinion of the B-BBEE Commission in respect of a set of facts presented to it by external parties regarding the interpretation of any provision of the Act, which includes the Codes of Good Practice and Regulations.
6. The ultimate goal of providing this service is to increase the understanding of the Act, and to ensure that it is applied consistently by all relevant parties to achieve the objectives of B-BBEE.
7. An Advisory Opinion provides guidance on the position that the B-BBEE Commission is likely to take in respect of any provision of the Act, and does not constitute a legal document or a ruling of the B-BBEE Commission on the matter concerned. The B-BBEE Commission may at any time review its opinion. An Advisory Opinion issued by the B-BBEE Commission will not be applicable if the set of facts presented when it was issued changes.
8. The B-BBEE Commission will only formulate an Advisory Opinion on the basis of a fully disclosed set of facts, accompanied by relevant documents where necessary, to enable the B-BBEE Commission to understand the matter fully. Although an Advisory Opinion is not binding on the B-BBEE Commission or the parties requesting it, if based on accurate facts, it offers the necessary guidance and clarity.
9. Based on the frequency, nature or the significance of an issue raised in requests for Advisory Opinions, the B-BBEE Commission may issue a general Practice Guide on the specific issue, which will be publicised on its website to provide guidance to all other stakeholders.

C. Timelines for issuing Advisory Opinions

10. Once the request for an Advisory Opinion is received by the B-BBEE Commission, a case number will immediately be assigned to it in accordance with Regulation 8, and every subsequent correspondence in respect of this matter must be marked with the allocated case number.

11. The B-BBEE Commission will endeavor to issue an Advisory Opinion within thirty (30) days of receiving the request, and in the event that the matter is more complex, the period may be extended.
12. The requester must ensure that the matter is presented in a manner that is clear and understandable, and attach relevant documents where available, to assist the B-BBEE Commission to achieve the necessary efficiencies to provide quick advisory services.

D. Requesting an Advisory Opinion

13. To obtain an Advisory Opinion, the requester must write a formal letter of request for an Advisory Opinion to the B-BBEE Commission outlining the facts of the matter in question.
14. The requester must in line with sub-regulation 8(4) ensure that the letter includes the requestor's legal name, address for service, telephone number, email address, fax number, and if the person is not an individual, the name of the person authorised to deal with the B-BBEE Commission on the matter.
15. The requester may submit relevant documents relating to the matter, such as shareholders' agreements, trust deeds, organograms or organisational structures, for the B-BBEE Commission to fully understand the request. These documents may be draft or final versions.
16. The B-BBEE Commission may elect to hold a formal meeting with the requester as part of the assessment of the set of facts presented and the documents submitted to the B-BBEE Commission relating to the matter.
17. The requester may choose to disclose the names of the parties involved in the matter, but where the parties are presented as anonymous, a proper description and labeling of each party is required to enable the B-BBEE Commission to understand each party's role in the matter.
18. An Advisory Opinion will be issued specifically to the person that requested it, and will not be made available to any other person. The B-BBEE Commission will treat each Advisory Opinion in accordance with the confidentiality provisions in the Act.

19. The requester must send the letter requesting an Advisory Opinion to the B-BBEE Commission:

By hand: **the dti** Campus, 1st Floor, Block B, 77 Meintjies Street, Sunnyside, Pretoria

By Post: Private Bag X84, Pretoria, 0001

By Fax: +27 12 394 2535

By Email: ramarem@beecommission.gov.za

E. Conclusion

20. The B-BBEE Commission is committed to meeting the timelines it sets for providing Advisory Opinions. However, this depends on the requester providing full details, in a clear and understandable manner, and where necessary attaching relevant documents. For instance, in respect of ownership structures, a schematic diagram is recommended to simplify the flow.
21. The B-BBEE Commission is committed to ensuring that the Act is implemented in a manner that is consistent to achieve the objectives of B-BBEE which should bring about an inclusive economy for all.
22. The B-BBEE Commission's powers and discretions under the Act, including its powers to investigate complaints, are not affected by the process of issuing the Advisory Opinion on any specific matter.
23. The B-BBEE Commission will ensure that it communicates any changes to the procedure outlined in this Explanatory Notice for Advisory Opinions.

Issued by the B-BBEE Commission

29 July 2016

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