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BEE in the Know

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New rules for B-BBEE transactions set impact beyond equity and ownership

B-BBEE transactions that are now required to be registered with the BEE Commission under its new regulations may not only affect ownership and equity transactions as initially thought but they could include transactions which incorporate other elements of the codes.

At acting BEE Commissioner Zodwa Ntuli's seminar for verification professionals held in Johannesburg recently, it was clear that there would be more questions than answers for some time to come. What emerged at the seminar was that other transactions of the codes such as supplier development or enterprise development programmes could also be required to be registered.

The current Broad-Based Black Economic Empowerment Regulations, 2016, gazetted for comment in February this year, states: "Major broad-based black economic empowerment transactions" must be registered with the Commission in terms of section 13F(1)(f) of the Act.

The Act also states that the transaction needs to be above a threshold determined by the Minister by notice in the Gazette: www.thedti.gov.za/gazettes/39704.pdf.

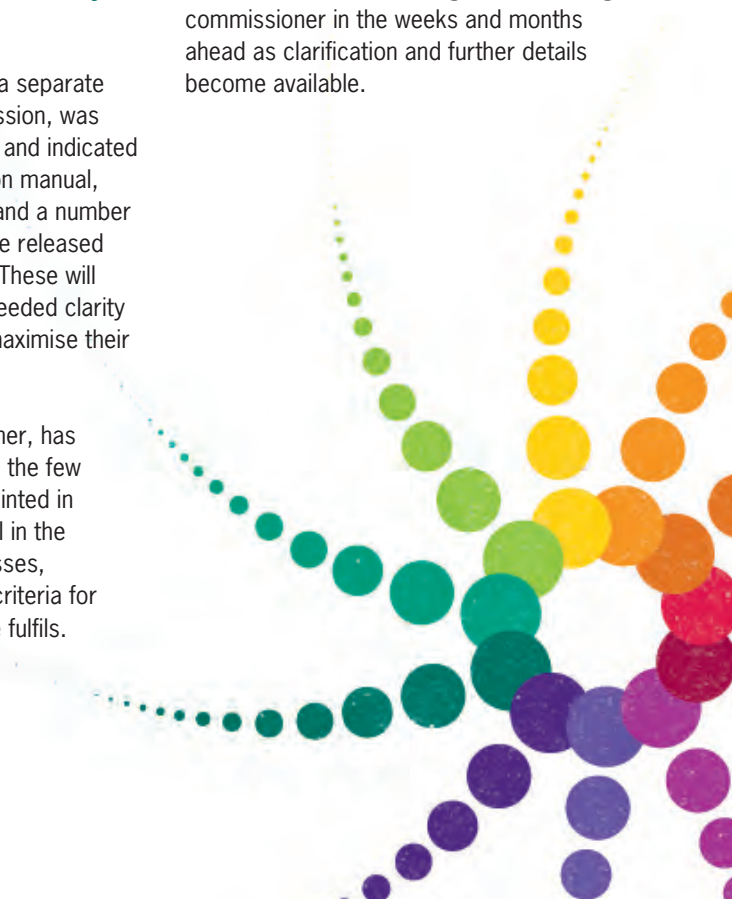
However, the thresholds have as yet not been communicated.

The dti's BEE unit, which is a separate entity from the BEE Commission, was also present at the seminar and indicated that the amended verification manual, technical assistance guide and a number of clarifications are set to be released before the end of the year. These will hopefully add some much-needed clarity for companies seeking to maximise their compliance levels.

Ntuli, the acting commissioner, has certainly been very active in the few months since she was appointed in September 2015, but is still in the process of clarifying processes, thresholds, definitions and criteria for the immense role which she fulfils.

As she pointed out at this session, BEE will only go away when transformation has been achieved, and her role is to see that transformation is effectively implemented.

We look forward to working with the acting commissioner in the weeks and months ahead as clarification and further details become available.



How ‘The Great BEE Forgery’ can cripple your company

Companies are increasingly falling victim to suppliers using fake BEE compliance certification and face losing business and clients if found to be basing their (B-BBEE) scorecards on unverified information.

The Grant Thornton Verification Services team have recently uncovered broad-based black economic empowerment (B-BBEE) certificates that are irregular and upon closer inspection, have been found to be forged or faked.

It is important to remember that forging a BEE certificate constitutes fraud and carries a sentence of up to ten years for anyone found guilty of such a crime.

The purpose of introducing verified certificates is to provide confidence in an assessment of an organisation’s B-BBEE progress, against the Department of Trade and Industry’s (dti) codes of good practice scorecard.

The certificate is used to verify an entity’s contribution to transformation and therefore having genuine, accredited BEE suppliers is an important aspect of B-BBEE compliance for companies.

Fake certificates on the increase

Grant Thornton’s Verification Services advisors have discovered cases where service providers have altered scores and dates on their out-of-date BEE certificates in order to improve their status and to avoid having to renew a certificate.

In some cases, complete forgeries – certificates that have been created using a letterhead of a reputable agency – have been issued in order to win contracts. These forged documents can be difficult to identify and only by contacting the purported verification agency named on the certificate is it truly possible to confirm the authenticity and validity.

New rules make fraudulent BEE certificates easier to produce

With the introduction of affidavits as a form of proof of an entity’s BEE status, it has now become even easier for businesses to create fraudulent certificates.

The new dti rules allow companies with a turnover of less than R10 million, as well as those with a turnover of less than R50-million and Black ownership of at least 51%, to use an affidavit to confirm their BEE status.

These rules were originally designed to alleviate the burden and cost of compliance on small and medium businesses. In some cases, however, it has led to unscrupulous business owners taking advantage of the affidavits and making false claims in order to qualify as exempt from verification.

Ignorance can cost companies

There is the view among some that it is the responsibility of companies relying on suppliers’ BEE certificates for their B-BBEE scorecard, to check the information provided to them in their bids and tenders.

This is particularly relevant when vetting potential enterprise or supplier development beneficiaries, who only need an affidavit to prove BEE status. If a company uses a supplier or contributes to a beneficiary whose certificate is a fake, there is a risk that the company’s own scorecard can be declared invalid, or spend with that entity excluded from the final score.

Companies are therefore well within their rights to request that suppliers or beneficiaries provide supporting information in order to verify that the affidavit is reliable, as part of their procurement approval process. Examples of these include share registers and certificates and independent confirmation of turnover.

Having an in-house validation procedure or using the services of a verification agency therefore protects the company’s status and prevents exposure to fraud and or fines.

To discuss your BEE certification requirements, please contact:
bee@za.gt.com



Verification agency accreditation to be strengthened

At the seminar for verification professionals held recently, it was confirmed once again that the Independent Regulatory Board for Auditors (IRBA) would no longer be involved in BEE verification, with the expected conclusion date for withdrawal being 30 September 2016.

The South African National Accreditation System (SANAS) will continue as the BEE accreditation body for verification agents for the time being.

The Grant Thornton Verification Services team are still awaiting some clarification on the transition process, but for now our understanding is that a new regulatory body will be put in place and that SANAS will be one of the accrediting bodies that falls under this. The dti has yet to announce if there will be a specific hand-over or phase-in period for the IRBA's members to become SANAS accredited.

In the meantime, certificates issued before 30 September 2016 (or any other date they announce) by a BEE auditor who is IRBA registered will be valid, as they would have been issued under a recognised authority at the time.

If you are currently undergoing a verification process which is being conducted by an IRBA registered auditor, you are advised to ensure it is completed before then or ask your agency to confirm their strategy for ensuring continued accreditation, to avoid possible complications.

As a SANAS-accredited verification agency, Grant Thornton Verification Services welcomes any accreditation system that advocates a single body and process for accreditation. This is a much-needed intervention to create consistency in standards and confidence in results.

To discuss the implication of the changing requirements on your business, or for further information, please contact: bee@za.gt.com



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