



Grant Thornton

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BEE in the Know



A newsletter to help keep you updated on legislative and other BEE related issues that may affect your business

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Is B-BBEE reporting now compulsory?



BY JENNI LAWRENCE: MANAGING DIRECTOR VERIFICATION SERVICES,
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In June this year the Broad-Based Black Economic Empowerment (B-BBEE) Regulations were gazetted (Gazette Number 40053) and these regulations have made it compulsory for certain entities to report their BEE status to the BEE Commission.

Unfortunately, this piece of legislation seems to have slipped through the cracks without many companies noticing. But, it is bound to get companies into trouble, if they fail to comply.

The BEE Commissioner was appointed under section 13(B) of the BEE Act, to (amongst other roles) conduct the following:

1. monitoring and dealing with complaints and fronting;
2. maintaining a registry of major BEE transactions; and
3. monitoring compliance from organs of state, public entities and private sector enterprises

This new requirement for certain entities to report their BEE status to the BEE Commission is in line with point (3) above in terms of the monitoring of compliance from various organisations.

The BEE regulations are the first to require and document specific reporting duties. The regulations make it clear that a verified BEE certificate issued by a SANAS-accredited verification agency is now a legal requirement for some.

Generally, a BEE certificate is not a legal requirement unless a measured entity is applying for certain licenses, such as fishing or liquor licences, or if the entity is applying for certain Department of Trade and Industry (DTI) incentives.

Up to now BEE compliance for other companies was not a legislative requirement, because it was seen as purely a requirement for business.

But, this seems to have changed.

So, if you are required to report to the commission, failure to do so would constitute an offence in terms of the B-BBEE ACT.

Who has to report?

The reporting duties outlined in the BEE regulations relate to three categories of company.

1. Any sphere of government, public entity or organs of state
Spheres of government, public entities or organs of state are required to file their Annual Financial Statements (AFS) and their BEE report in prescribed Form B-BBEE 1 within 30 days of the approval of the audited statements and annual report.
2. Public companies listed on the Johannesburg Stock Exchange (JSE)
Public companies listed on the JSE must submit a compliance report annually, using Form B-BBEE 1, within 90 days of the end of the financial year of the public entity which is listed on the JSE. If the company has included this report in their AFS and annual report, this may be submitted to the commission within 30 days of the approval of the AFS and annual report.
3. Sectorial Training Authorities (SETAs)
SETAs must submit Form B-BBEE 2, detailing compliance around skills spend and other criteria, within 90 days of the end of the financial year. If the SETA has included this report in their AFS and annual report, this may be submitted to the commission within 30 days of the approval of the AFS and annual report.

The information provided in Forms B-BBEE1 and B-BBEE 2 must be based on verified information, reflecting compliance on each element specified in the report. Reports can be submitted to bbbeeapplications@thedti.gov.za and copies of the relevant gazette and reports can be found [here](#).

What happens next?

The commissioner is required to confirm receipt within five (5) days. She is then required to review and respond in writing within 90 days, and highlight any area of improvement required in the report submitted.

If an entity fails to comply with the reporting requirements, the commissioner will issue Form B-BBEE 3, detailing the issues identified and allowing the entity 30 days to submit a corrected report. Further steps may follow if any offences are identified.

The challenges

The timeframe for submission of the relevant reports to the commission means that a verification needs to be planned well in advance, in order to ensure the verified certificate is available in time for completion and submission of the required reports.

It is important to remember that the spend elements of the BEE scorecard are verified based on contributions measured during a 12 month financial period. If the financials are not finalised in time, the verification will be delayed, which could impact on the ability of a company to report within the required timeframe.

It seems clear that that the report submitted must be related to the AFS which are submitted to the commission at the same time. This is contrary to the practice of some entities, which sometimes run more than a year behind, in terms of financial periods being rated for verification.

There is a question as to whether an auditor would be required to report regarding a failure to comply, as a material breach of a director's fiduciary duty in terms of meeting the provisions of the B-BBEE Act applicable to a JSE-listed entity.

The Grant Thornton Verification Services team are currently working with the Audit and Assurance team in order to seek clarification on this issue.

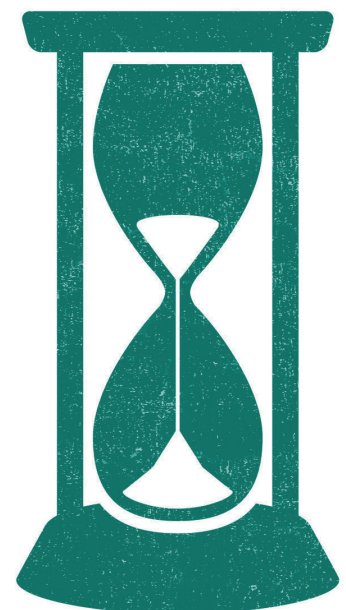
In the meantime, it is more important than ever to ensure that you have your BEE verification date secured and that you don't miss the reporting deadline.

No doubt there will be additional pressure on verification agencies next year, with the IRBA regulated agencies exiting the market from 31st December 2016, leaving a temporary capacity gap.

As a SANAS accredited verification agency, Grant Thornton Verification Services will be bolstering its teams to meet the demand for our clients.

To discuss your B-BBEE Reporting Requirements according to this new regulation, or for further information, please contact:

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Marketing, Advertising and Communications (MAC) Codes now in play

BY JENNI LAWRENCE: MANAGING DIRECTOR VERIFICATION SERVICES, GRANT THORNTON

Until this year, businesses involved in marketing, advertising and / or communication (MAC) have fallen under the general Broad-Based Black Economic Empowerment (B-BBEE) scorecard.

While a MAC sector charter was originally gazetted under section 12 of the B-BBEE Act in August 2008, it was merely published for information purposes initially and it was intended to be a statement of intent by industry players. Now that the amended codes of good practice have been implemented, so have the MAC Codes.

The new MAC codes have been compiled in collaboration with industry stakeholders including:

The Advertising Standards Authority of South Africa (ASA);
The Association for Communication and Advertising (ACA);
Communication and Advertising Forum for Empowerment (CAFE);
Government Communications and Information Services (GCIS);
The Public Relations Institute of Southern Africa (PRISA) and The South African Advertising Research Foundation (SAARF).

Gazetted in May 2016, this scorecard is applicable for entities which derive at least 50% of their turnover from this sector, as follows:

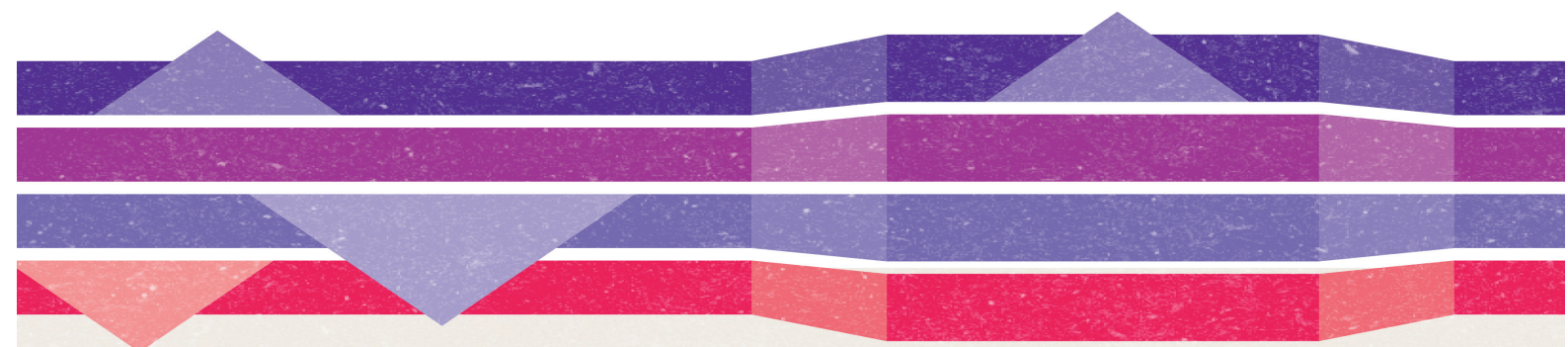
1. Advertising companies - enterprises whose core business is the conceptualisation, creation and production of advertising to foster a relationship between a product and the consumer.
2. Public relations companies - enterprises whose core business is the conceptualisation, creation and implementation of communication to facilitate a relationship between a product and the public.

3. Communication companies – enterprises whose core business is the conceptualisation, creation, production and implementation of communication as a marketing tool in two or more of the following disciplines:

- Advertising
- Public Relations
- Experiential
- Design

The turnover thresholds for this sector differ in that the definition of turnover has been amended to include total sales less cost of sales. Cost of sales is restricted to third party costs that result in the execution of ideas on which agencies receive remuneration.

This is particularly beneficial for the MAC sector, which often incurs 3rd party costs on behalf of their clients in producing and delivering work.



Thresholds for the MAC scorecards are as follows:

Sub industry sector	EME	QSE	Generic
Public relations industry	0-R5million	R5million – R10 million	R10 million and above
Advertising industry	0-R10 million	R10 million – R50million	R50million and above
Marketing, advertising, communication research industry	0-R10 million	R10 million – R50million	R50million and above

So how does the new MAC Sector Code differ from the Generic Codes?

A two phase implementation has been provided for, with the first set of targets in place until 31 March 2018, and higher targets in some areas, thereafter – i.e. from 1 April 2018.

For Generic sized companies (businesses with a turnover greater than R50m), or PR agencies with a turnover greater than R10m, the following differences are significant:

- Black ownership targets have increased from 25% to 40% (and 20% for black women ownership). These targets increase in phase two, to 45% black ownership and 30% black women ownership;
- Lower targets for skills spend are in place –but this increases in phase two. We see an emphasis on training people through learnerships and then absorbing them into employment, with 10 points awarded here instead of the 5 in the general amended codes. This feeds into the apprenticeship model in which so many of the industry's workers first cut their teeth.

- Higher second phase procurement targets have been set for qualifying spend incurred with QSEs and EMEs.
- The socio-economic development target increases to 2.5% (as opposed to 1%) of net profit after tax (NPAT), in the second phase.

A new element has been introduced, under the heading **“Responsible Social Marketing and Communications”** (RSM). Five (5) points have been allocated to this element, with an initial target of 1% of NPAT and a 2018 phase 2 target of 2.5% of NPAT.

This element measures the “annual value of contributions and participation in sector-specific programmes of the entity to promote responsible behaviour changes in line with Government’s strategic objectives”.

In the codes, it is stated that this is “measured by the contribution which MAC entities make towards the promotion of responsible social marketing through involvement in a programme designed to propound, propagate and entrench responsible social marketing:

- Attendance of sector RSM initiatives
- Attaining no adverse RSM rulings for the year under review

Although not specifically stated, it appears that the requirement for this element is related to the cost of supporting RSM initiatives, as well as not contravening any requirements that may result in a ruling.

This section mentions the dire consequences of obesity and drunk driving as examples of programmes that would be considered under the RSM element.

To discuss your BEE certification requirements according to the MAC codes, or for further information, please contact: bee@za.gt.com



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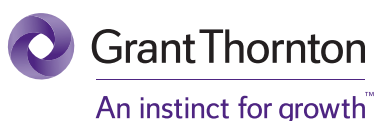
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