

# JOHANNESBURG STOCK EXCHANGE

# B-BBEE REPORTING

## THE TRANSFORMATION 'RIPPLE EFFECT'

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Businesses listed on the Johannesburg Stock Exchange (JSE) are viewed by most as being at the helm of the South African economy. This perception is indeed accurate in terms of the private sector, despite the relatively low number of such companies. Currently, there are 370 companies listed on the JSE Equity Board, representing less than 1% of all businesses operating in South Africa. However, the combined market capitalisation of JSE listed companies stands at R13 trillion.

The collective power and influence of JSE listed companies contribute substantially to the economy. This contribution is both direct and indirect, inter Alia by funding government coffers through taxes, offering large-scale employment and investing in much needed socio-economic upliftment initiatives. Moreover, listed companies, through their supply chain, have the potential to drive meaningful transformation, not only through their direct suppliers but indirectly through the supply chains of their suppliers, this sequence of value-adding economics creates a 'ripple effect' that would drive transformation.

Therefore, the extent to which JSE listed companies embrace and comply with B-BBEE legislation has a significant bearing on the rate of transformation in South Africa. Their collective role is vital, both substantively and in terms of establishing prevailing business ethics and culture.

The degree of transformation in JSE listed companies has been somewhat difficult to quantify and objectively assess. It is for this reason, in 2017, that for the first time in its 130-year history, Transformation Reporting was formally introduced as a requirement for listed companies. This development stems from recent associated amendments to the B-BBEE Act and Regulations, the JSE Listing Requirements and The King Code.

### The B-BBEE Act and Regulations

Amendments to the B-BBEE Act and its Regulations were gazetted on 6<sup>th</sup> June 2016, followed by Explanatory Notice 2 of 2017, which included a Compliance Report Template that was published in November 2017, but only became effective on 1<sup>st</sup> April 2018.

The Regulations oblige all JSE listed companies to submit a compliance report to the B-BBEE Commission within 90 days of the organisation's financial year-end. The content must follow conformity, be presented in the prescribed form and reflect transformation initiatives and outcomes for each measured element on the scorecard on which a company qualifies to be measured.

In 2003, Section 13 of the B-BBEE Act (The Act) paved the way for the implementation of B-BBEE reporting requirements for JSE listed companies.



**Section 13 F(1)(g)** of the Act specifies that it is a function of the B-BBEE Commission; “to receive and analyse such reports as may be prescribed concerning B-BBEE compliance from organs-of-state, public entities and private sector enterprises.”

**Section 13 G(2)** of the Act requires that; “All public companies listed on the JSE must provide to the B-BBEE Commission, in such a manner as may be prescribed, a report on their compliance with B-BBEE.”

These occupational levels must be further broken down into the following categories:

- Race classification;
- Gender;
- Age in chronological order;
- Location by province; and
- Disability status.

The detail and manner of reporting are contained in the Regulations (The Regulations), as gazetted in June 2016, Section 12(3) outlines the requisite format, as well as the information required for submission. It furthermore specifies that the Report “must be submitted to the B-BBEE Commission within ninety (90) days of the financial year-end of the JSE listed company”. A Report must contain<sup>1</sup>:

## Form B-BBEE-1

- > This form is published as a Schedule to The Regulations and provides the template for reporting. It compels ‘verified’ information, indicating the state of compliance with respect to the following elements of a B-BBEE Scorecard:
  - Ownership;
  - Management Control;
  - Skills Development;
  - Enterprise and Supplier Development;
  - Socio-Economic Development; and
  - Any other sector-specific requirement.
- > Verified B-BBEE Certificate - The use of the word ‘verified’ indicates that the information required must be in the form of a SANAS accredited B-BBEE Certificate issued by an accredited verification agency.
- > Annual Financial Statements.
- > Annual Report.

## Explanatory Notice 2 of 2017 and the Compliance Reporting Matrix

As of 1<sup>st</sup> April 2018, these announcements significantly expanded the reporting requirements to the B-BBEE Commission for JSE listed companies to include the following elements of a B-BBEE Scorecard:

### Ownership and Management Control

A breakdown of the ownership and management structure must consist of:

- > Percentage of ‘Black’ Shareholders;
- > Dividends declared by ‘Black’ Shareholders;
- > The number of ‘Black’ Directors and Managers for each of the following Occupational Levels:
  - Non-Executive Directors;
  - Executive Directors;
  - Senior Management;
  - Middle Management; and
  - Junior Management.

### Skills Development

A breakdown of Skills Development expenditure and contributions for ‘Black’ People, which includes:

- > Employees;
- > Unemployed People;
- > Learnerships, Apprenticeships and Internships;
- > Total absorption.

Full details pertaining to the value of initiatives must be outlined and broken down into the following categories.

- > Race classification;
- > Gender;
- > Age in chronological order;
- > Location by province; and
- > Disability status.

### Enterprise and Supplier Development

All contributions towards Supplier Development and Enterprise Development activities must be itemised, highlighting the total amount of ‘Black’ Beneficiaries that are EMEs and QSEs by:

- > The percentage of ‘Black’ Ownership per Beneficiary; and
- > The total value of each contribution.

### Socio-Economic Development

All contributions to Beneficiaries must be categorised as follows:

- > Total number of ‘Black’ Beneficiaries;
- > Race classification;
- > Gender;
- > Geographical location; and
- > The total value of initiatives.

## Report Submission

Section 12(9) of the Regulations stipulate that upon receiving a Report, the B-BBEE Commission will:

- > Acknowledge receipt thereof within five days;
- > Raise issues of non-compliance within 90 days; and
- > Where necessary, grant the affected organisation 30 days to address concerns. Alternatively, provide notification of compliance<sup>2</sup>.

“The collective power and influence of JSE listed companies contribute substantially to the economy.”



## JSE Listing Requirements

The modus operandi of good governance and legislative compliance forms the foundation of the JSE. The amendments to the JSE Listing Requirements, which became effective on 19<sup>th</sup> June 2017, aim to drive statutory B-BBEE Reporting, as outlined in Section 3.84(i), which regulates the following 'Continuing Obligations':

- > With immediate effect, to comply with the Act, a listed company shall publish their B-BBEE scorecard on their website;
- > Notification thereof must be given to the JSE; and
- > Publish SENS announcement.

Currently, no specific penalties or sanctions for non-compliance have been provided for, other than violating requirements. However, it has been established that each violation will be evaluated on a case-by-case basis and dealt with under the JSE rules and processes.

## Submission Observations

As part of its mandate to track and monitor the 'ripple effect' of transformation in South Africa, the B-BBEE Commissioner annually publishes the 'National Status and Trends on Black Economic Empowerment Report'. In its 2018 edition, a section of this report detailed the compliance of JSE listed companies based on the 2017 submissions. Out of the 401 JSE listed companies during this period, only 121 reports were received, representing 30.17% of listed companies. Reports received represent the following sectors<sup>3</sup>:

Certificate Received by Sector	The Threshold of Certificates Received		
	EMEs	Large Enterprises	Total Received
AgriBEE Charter		8	8
Financial Sector Code		16	16
Forrest Sector Code		2	2
Information Communication Technology Sector Code		6	6
Integrated Transport Sector Code		2	2
Property Sector Code	1	19	20
Tourism Sector Code		1	1
Generic Codes		53	53
Reported, but no data captured Code		13	13
<b>TOTAL</b>		<b>120</b>	<b>121</b>

It is interesting to note the relative B-BBEE achievements of the JSE listed companies that did submit Reports based on their Status Levels as outlined below:

Level 1	3.31%	Level 2	12.40%	Level 3	8.26%	Level 4	17.36%
Level 5	11.57%	Level 6	7.44%	Level 7	4.13%	Level 8	7.44%
Non-Compliant	16.53%	<i>*11.57% were reported but not captured.</i>					

Based on the findings of the B-BBEE Commission report since the Regulations became effective, it is evident that many JSE listed companies have not as yet adopted compliance reporting as part and parcel of being a listed company. However, this may be a result of these requirements being newly legislated. Therefore, it is reasonable to expect an increase in submissions over the following reporting period.

At the forefront of the South African economy, it is essential for JSE listed companies to take the lead in transformation to generate the 'ripple effect' that will drive the economy and transformation alike. To this end, the transparency of B-BBEE achievements, via reporting obligation to the B-BBEE Commission and the amended JSE listing requirements, are welcomed.

Source of Reference:  
<https://bbbeecommission.co.za/regulations/>  
<https://www.jse.co.za/articles/jse-amends-listing-requirements>  
<https://bbbeecommission.co.za/wp-content/uploads/2018/03/National-Status-and-Trends-on-Black-Economic-Empowerment-Report-31-March-2018-FINAL.pdf>