

## BE(E) AWARE

December 2017

On 31 March 2017 the B-BEE Commission ("the **Commission**") released a Practice Guide ("the **Practice Guide**") on the enhanced recognition of Exempted Micro-Enterprises ("**EMEs**") and Qualified Small Enterprises ("**QSEs**") when applying the Modified Flow Through Principle ("the **MFTP**").

The BEE Codes provide that when an entity is majority black owned such entity may be regarded as 100% black owned. By way of example: **Company A** is a 100% black owned company owning 51% share equity in **Company B**. **Company B** owns 51% share equity in **Company C**. Therefore, by applying the **MFTP**, **Company B** will be regarded as 100% black owned (as it is majority black owned) and consequently **Company C** will be regarded as 51% black owned, whilst the effective black shareholding of **Company C** (in terms of the general "flow through principle") is only 26% (51% x 51%).

If **Company C** is a **EME / QSE** it will (when applying the **MFTP**) automatically qualify as a level 2 BEE contributor for being 51% black owned and is then only required to obtain a sworn affidavit confirming same (this is referred to as "**Enhanced Recognition**"). The **Practice Guide** serves as confirmation that it is the **Commission's** interpretation that in such instance the **MFTP** may not be applied when seeking **Enhanced Recognition** and that such application undermines the objectives of the B-BBEE Act and / or BEE Codes.

It is important to note that the **Commission's Practice Guide** is a non-binding guide and that the BEE Codes does not limit the application of the **MFTP** by **QSE's** and / or **EME's**. The only limitation for application of the **MFTP** in terms of the BEE Codes, is that the said principle may only be applied once in the entire ownership structure of a measured entity. However, should be wary of the aforesaid interpretation by the **Commission** while restructuring the company's ownership structure to achieve **Enhanced Recognition**.

*Law & Laughter*

Joke:

Answer

Visit us online for the latest news and info on upcoming events!

[www.vanhuyssteens.co.za](http://www.vanhuyssteens.co.za)



**PHYSICAL ADDRESS:**

Die Klubhuis, Corner of Pinaster  
Avenue and 18th Street, Hazelwood,  
Pretoria, South Africa, 0081

**POSTAL ADDRESS:**

Postnet Suite 360  
Private Bag X06  
Waterkloof, 0145

**CONTACT DETAILS:**

TEL: +27 12 349 2306  
FAX: 086 615 1183  
[www.vanhuysteens.co.za](http://www.vanhuysteens.co.za)

**Van Huissteens appreciates your feedback:**

For more information or editorial contributions, please email: [commercial@vanhuysteens.co.za](mailto:commercial@vanhuysteens.co.za)

If you would like to subscribe to this service, please send a blank e-mail to: [commercial@vanhuysteens.co.za](mailto:commercial@vanhuysteens.co.za) with the word 'Subscribe' in the subject line. To unsubscribe send a blank e-mail to [commercial@vanhuysteens.co.za](mailto:commercial@vanhuysteens.co.za) with the word 'un-subscribe' in the subject line. As a subscriber, your name will not be released to any third party, but you may receive research surveys and similar communications about activities relating to Van Huissteens and your fields of interest.

Van Huissteens Commercial Attorneys disclaims all liability for any loss, damage, injury or expense however caused, arising from the use of, or reliance upon, in any manner or form, the information provided through this newsletter. It does not, in any form or manner, warrant, or purport to warrant, the truth, accuracy and/or completeness of the information provided. Should any of the information provided herein be applicable to (or interest) you, please consult with a legal professional for comprehensive advice and guidance thereon. The publisher's prior written permission is required to reproduce, publish, use and/or display the contents hereof in any form or manner and/or for any reason whatsoever.