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## ***FURTHER AMENDMENTS TO BROAD-BASED BLACK ECONOMIC EMPOWERMENT RULES PROPOSED BY MINISTER OF TRADE AND INDUSTRY***

In an ever-changing world, one thing is for certain: get used to adapting to change.

On **29 March 2018**, the Minister of Trade and Industry published draft amendments to the Broad Based Black Economic Empowerment Codes (“Codes”) for public comment in **Gazette Number 41546**. The proposed amendments are in line with the Government’s policy to actively promote and support B-BBEE (and especially majority owned black businesses) in South Africa.

The proposed changes include:

- clarifying the measurement of the minimum requirements for the priority B-BBEE elements (namely ownership, skills development and enterprise, and supplier development);
- providing that the provisions whereby 100% and 51% black owned Exempt Micro Enterprises and Qualifying Small Enterprises are deemed to have a level 1 and level 2 BBEE rating, respectively; and will only apply if the black ownership is measured using the flow-through principle using actual black shareholdings. The modified flow-through principle whereby a majority black shareholding may be deemed to be 100% black owned may no longer be used;
- extending the provisions to large enterprises (businesses with an annual turnover of over R50 million) if they are 51% or 100% black owned in accordance with the flow-through principle. Furthermore large/generic enterprises cannot benefit from the deeming provisions if any of the following is utilised or recognised in the calculation of their black ownership:

- the modified flow-through principle;
- the exclusion of ownership by organs of State or public entities;
- the exclusion of any BBEE facilitators;
- private equity funds as contemplated in the Codes;
- the exclusion of mandated investments;
- the sale of assets, equity instruments and other instruments; and
- ownership following the sale or exit of black shareholders;

clarifying the measurement of unincorporated joint ventures for BBEE ownership purposes;

changing the generic score card (which is used for measuring the BBEE status of large enterprises) to increase the number of weighting points for management control from 15 to 19;

introducing financial targets for entities qualifying for the Youth Employment Service (Y.E.S) Initiative.

**The proposed changes are not yet finalised and the sixty-day period for public comment expires on 28 May 2018.**