

TO BEE OR NOT TO BEE PART 3

A closer look at B-BBEE fronting



Welcome to the third of six monthly newsletters aimed at helping you better understand the Amended B-BBEE Codes of Good Practice and the Amended B-BBEE Financial Services Codes.



In this issue we look at the practice of **B-BBEE fronting** — how it is defined in terms of the Act and the penalties involved with the practice.

With the B-BBEE Amended Codes of Good Practice and its binding sectors codes for entities that participate in public sector procurement, it became apparent that some companies were merely 'fronting' to achieve these levels.

What is B-BBEE fronting?

The B-BBEE Act defines fronting as a **transaction, arrangement or other act or conduct** that directly or indirectly undermines or frustrates the achievement of the **objectives of the Act** or the **implementation** of any of the provisions of this Act, including but not limited to practices in connection with a B-BBEE initiative, in which:



- 1 Appointed black persons are discouraged or inhibited from substantially participating in the core activities of that enterprise.
 - 2 The economic benefits received as a result of the B-BBEE empowerment status of an enterprise do not flow to black people in the specified ratio.
 - 3 Entering into a legal relationship with a black person for the purpose of that enterprise achieving a certain level of B-BBEE compliance without granting them the economic benefits that would come with the status or position held;
- or
- 4 Involving the conclusion of an agreement with another enterprise in order to achieve or enhance B-BBEE status, in which:

- 4 i There are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;
- 4 ii The maintenance of business operations is reasonably considered to be improbable, in regard to available resources;
- 4 iii The terms and conditions were not negotiated on a fair and reasonable basis.

Fronting penalties

There are strict penalties for any entity found guilty of fronting. A person is guilty of an offence if that person knowingly:



- A Misrepresents or attempts to misrepresent the B-BBEE status of an enterprise.
- B Provides false information to a verification professional/any organ of state.

'Knowing', 'knowingly' or 'knows', when used with respect to a person, and in relation to a particular matter, means that they either:

- A Had actual knowledge of that matter; or
- B Were in a position in which they reasonably ought to have had:

- Actual knowledge;
- Investigated the matter to an extent that would have provided the person actual knowledge; or taken other measures which would reasonably be expected to have provided the person with actual knowledge of the matter.



An accredited B-BBEE rating agency or any procurement officer or other official of an organ of state or public entity that becomes aware of fronting and fails to report it is guilty of an offence.

Any person convicted of an offence is liable:



To a fine or imprisonment for a period not exceeding 10 years or both;



In the case of an enterprise, to a fine of 10% of annual turnover.

Any person and/or entity convicted of an offence shall be **banned from transacting** with any public entity and shall be entered into the National Treasury Register of Tender Defaulters.

If I suspect a fronting issue, what do I do?

The government established the B-BBEE Commission as detailed under 13B of B-BBEE Act 46 of 2013 with jurisdiction throughout South Africa. The B-BBEE Commission was established to oversee the implementation of the Act, which includes investigations on any matter arising from the applications of Act, such as fronting.



Any person may lodge a complaint with the B-BBEE Commission. Once investigations are completed, the findings or recommendations are published, including on the B-BBEE Commission website.

TO REPORT A FRONT OR LODGE A COMPLAINT:



Log on to the B-BBEE Commissioner website: <https://www.bbbee.commission.co.za/lodge-a-complaint/>



The complainant must **download, complete and re-submit** the respective B-BBEE form, which is available on the website.



Should you have **further questions or require assistance**, please email our Transformation Team at SantamTransformation@santam.co.za.

Thank you for reading! Keep an eye out for part 4 in the series.