



MEDIA RELEASE

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WHITE PEOPLE, FOREIGN NATIONALS, PERMANENT RESIDENTS, DO NOT QUALIFY FOR A BENEFIT UNDER THE B-BBEE ACT: IT IS ILLEGAL CONDUCT

The B-BBEE Commission appeals to organs of state and public entities to enhance due diligence processes to detect and reject invalid B-BBEE claims made by entities during procurement, licensing, granting of economic incentives, sale of state assets or public private partnership processes to ensure compliance with the B-BBEE Act. This follows public concerns that B-BBEE seems to benefit those that are not intended under the law, which includes foreign nationals, permanent residents, those with refugee/asylum status and white people that claim to be black. The B-BBEE Commission will be conducting site visits to check compliance status of entities it has previously found to have violated the B-BBEE Act and where it has received tipoffs to eradicate this illegal conduct.

According to the B-BBEE Act, “**black people**” is a generic term which refers to Africans, Coloureds and Indians (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation (i) before 27 April 1994; or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

The B-BBEE Act specifically defines black people to exclude any non-black South African citizens, foreign nationals and black people who acquired citizenship by naturalisation after 27 April 1994. It is also the responsibility of verification agencies to ensure that the people they recognise as black during the verification process do actually qualify and meet the requirements in section 1 of the B-BBEE Act.

Ms Moipone Kgaboesele who heads the Investigations and Enforcement of the B-BBEE Commission indicated that her office has dealt with cases that show the extent to which entities would go to achieve a higher B-BBEE status or to appear B-BBEE compliant for purposes of accessing contracts, authorisations and benefits, with some verification professionals being complicit in most of the cases.

“This conduct was rife in the early stages of the B-BBEE Commission around 2016/2017 but we are now seeing verification professionals becoming more vigilant in improving the quality of the verifications and reporting entities that attempt to cut corners. Misrepresentation and fronting are serious criminal offences. Now that we have focused our attention on raising awareness over the years, we will not

hesitate to refer entities for prosecution and for cancellation of licences and contracts awarded. We also provide free advice, so there is no excuse not to do the right thing now.” she added.

Ms Kgaboesele clarified the issue of Chinese people and said upfront that not every Chinese person who is in South Africa qualifies for recognition under the B-BBEE Act. It is only Chinese people who were born in South Africa before 1994; who were classified as coloureds, hence they are included in the definition of ‘black people’ as coloureds by virtue of a court case initiated in 2007. The Department of Home Affairs, as they are the custodian of the population register, would have details of the Chinese people born in South Africa prior to 1994. Therefore, to give effect to the above requires proper verification methodologies to determine which South African Chinese qualify under the B-BBEE Act, with sufficient proof thereof.

“A number of complaints involving people from other countries, including Eswatini, Lesotho and Zimbabwe are under investigation, hence it is important that we always test black ownership claimed by entities up to the natural black person claimed, with proof thereof”, Ms Kgaboesele concluded.

The following are the examples of some of the pronouncements the B-BBEE Commission has made regarding who may or may not benefit under the B-BBEE Act:

B-BBEE Commission // Forklift Parts World (Pty) Ltd

We responded to an anonymous complaint alleging that Forklift Parts World (Pty) Ltd was using and circulating a fraudulent B-BBEE certificate that was issued by Ridwaan Jeena and AuditEx SA LLC, which certificate depicted the entity as being 50% black owned and 25% black women owned. On investigation, we found that the B-BBEE certificate issued to Forklift Parts World (Pty) Ltd was invalid on the basis that Rui Li and Zhou Jiang, who Forklift Parts World (Pty) Ltd claimed as its black owners are Chinese nationals that are merely permanent residents in the Republic of South Africa.

This means these Chinese nationals do not qualify to regard themselves as black people under the B-BBEE Act. Forklift Parts World (Pty) Ltd argued that Ridwaan Jeena and AuditEx SA LCC coordinated the issuing of such a B-BBEE certificate. We found that Forklift Parts World misrepresented its B-BBEE status in violation of the B-BBEE Act.

We also noted that AuditEx SA LLC and Ridwaan Jeena knowingly issued the invalid B-BBEE certificate to Forklift Parts World (Pty) Ltd without ascertaining the credentials of Rui Li and Zhou Jiang, contrary to the verification methodologies required by the Verification Manual and further perpetuated the misrepresentation of Forklift Parts World (Pty) Ltd’s B-BBEE status. Forklift Parts World (Pty) Ltd agreed to and implemented the remedial recommendations issued by the B-BBEE Commission and remedied the matter.

B-BBEE Commission // FRS Warehousing CC t/a EPS Courier Services

We investigated in response to a concern submitted by Mr Keith Levenstein of EconoBEE that FRS Warehousing CC t/a EPS Courier Services (EPS Courier Services) presented itself as a 100% black-owned entity and further obtained a B-BBEE level 7 (seven) based on incorrect ownership credentials, when the entity is 100% owned by Mr Evert Phillip Serfontein, a white South African male. Mr Evert Phillip Serfontein through his lawyers Lee and McAdam Attorneys, argued that Mr. Evert Phillip Serfontein was apparently informed by his mother that his biological father is actually a coloured man and that his white father is not real his father. In this regard they promised to provide proof to substantiate this claim, which to date had not been provided.

On investigation we found that indeed Mr Evert Phillip Serfontein and EPS Courier Services misrepresented the B-BBEE status in violation of the B-BBEE Act and what was of further concern was that even after the B-BBEE certificate was withdrawn by the verification professional, Mr D. Kalmin at the time, EPS Courier Services continued to trade with the said withdrawn certificate. Mr Evert Phillip Serfontein is a white South African male, who is not entitled to a benefit under the B-BBEE Act.

Although Mr Serfontein threatened to approach the courts to have himself declared a black man, we have not been served with any court papers to that effect, and we will vigorously oppose such an application. At the time of findings Mr Serfontein had ceased using the B-BBEE certificate in question and the B-BBEE credentials of EPS Courier Services, if any, would be scrutinised for compliance.

B-BBEE Commission // Stellar Events (Pty) Ltd & Others

We initiated an investigation against Stellar Events (Pty) Ltd, Finsolve Solutions CC and GNL Management Services CC in respect of the B-BBEE certificates issued to Stellar Events (Pty) Ltd recognising black ownership on the basis of the credentials of Ms. Marion Mbeiza Kafuko, who is a permanent resident of the Republic of South Africa, which certificates were issued by the technical signatories, namely; Gavin Beretta of Finsolve Solutions CC and Mr. Grant Nathan Louw of GNL Management Services CC. We found that Stellar Events (Pty) Ltd engaged in misrepresentation of its B-BBEE status, aided by Finsolve Solutions CC and GNL Management Services CC who failed to follow the methodology provided for verification. Despite Mr. Gavin Beretta and Finsolve Solutions CC's averment that Finsolve Solutions CC rejects applications for B-BBEE verifications when they noticed that such clients are not South Africans, we found that Mr. Gavin Beretta commissioned a B-BBEE sworn affidavit deposed to by a certain Mr. Munyaradzi Marufu of Animania CC which declared that the entity is 100% black owned despite the fact that Mr. Munyaradzi Marufu is a permanent resident of the Republic of South Africa, not a citizen, also thereby misrepresenting the actual B-BBEE status of Animania CC, contrary to the objectives of the B-BBEE Act.

We also noted that Mr Grant Nathan Louw of GNL Management Services CC also issued a B-BBEE certificate to Stellar Events (Pty) Ltd resulting in Stellar Events (Pty) Ltd obtaining 100% black ownership

based on the same credentials of Ms. Marion Mbeiza Kafuko, a permanent resident of the Republic of South Africa, thus misrepresenting the entity's B-BBEE status. Both Mr Gavin Beretta and Mr Grant Nathan Louw apologised for the misconduct and implemented remedial recommendations set by the B-BBEE Commission. Stellar Events (Pty) Ltd unduly benefitted from contracts awarded by Transnet National Ports Authority (TNPA), and the South African Social Security Agency (SASSA) based on the company's invalid B-BBEE certificates and misrepresented B-BBEE status.

Conversely, Stella Events Pty (Ltd) failed to respond to the B-BBEE Commission's findings and/or implement the remedial recommendations set therein.

For more information on the cases, please click on the links:

B-BBEE COMMISSION // FORKLIFT PARTS (PTY) LTD AND OTHERS

<https://www.bbbeecommission.co.za/b-bbee-commission-forklift-parts-pty-ltd-and-others/>

B-BBEE COMMISSION // STELLAR EVENTS (PTY) LTD AND OTHERS

<https://www.bbbeecommission.co.za/b-bbee-commission-stellar-events-pty-ltd-and-others/>

B-BBEE COMMISSION // FRS WAREHOUSING CC T/A EPS COURIER SERVICES

<https://www.bbbeecommission.co.za/b-bbee-commission-frs-warehousing-cc-t-a-eps-courier-services/>

ENDS

The B-BBEE Commission was established in terms of section 13B of the B-BBEE Act 53 of 2003 as amended by Act No 46 of 2013 with powers effective from 6 June 2016. The B-BBEE Commission's mandate, amongst others, is to supervise and encourage adherence to the B-BBEE Act in the interest of the public, conduct reactive and proactive investigations on fronting and other violations and promote good governance and accountability by creating an effective and efficient environment for the promotion and implementation of the objectives of broad-based black economic empowerment.

Issued by the B-BBEE Commission

For queries, please feel free to contact:

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