

Wanting to lodge a complaint with the B-BBEE Commission?

Who is the B-BBEE Commission?

The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established as an entity within the administration of the Department of Trade and Industry (“the dti”) by the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended by Act 46 of 2013 (“the Act”) to oversee the implementation of the Act, which includes investigations on any matter arising from the applications of Act, such as fronting.

How far does B-BBEE Commission mandate go?

We are a regulatory entity with jurisdiction throughout the South Africa, entrusted by law to act with impartiality and perform functions without fear, favour or prejudice. It does not matter where the complaint comes from for as long as it is within South Africa.

We look at violations that occurred after 24 October 2014, but where a violation occurred before this date, and the conduct, licence, agreement, is still running, we have powers to deal with such a violation.

Who can lodge a complaint?

Any person who suspects or is aware of the violation of the Act, such as where black people are used as fronts to achieve B-BBEE points, may lodge a complaint with us.

For an example, employees in an entity may be aware that the entity is practicing fronting or tokenism by presenting black people as shareholders or as executives in the entity, when such is not the case.

It is an offence to try to improperly influence our officials or obstruct us during the exercise of the powers and performance of duties under the Act.

What sort of issues can you complain about?

Any person can complain about fronting practices, which are defined in the Act to mean those practices that undermine or frustrate the objectives of the Act, or impede the implementation of any of the provisions of the Act. So a violation of any provision of the Act can be reported to us.

Fronting practices generally take the form where black people are presented as directors, shareholders or beneficiaries in an entity for the entity to look like it has proper B-BBEE status.

Entities often do this to get higher points to qualify for a government tender or a license that they need to get to operate in sectors such as mining. Also they apply for government funding or incentives, they may put black people in the front to give the impression that the entity is empowering black people, when it is not so.

These practices come in many forms and shapes, and become creative every day. So indicators are used to detect such practices, such as where a technician is an entity is put on its structure as a shareholder or manager in the entity, but still earning his salary as a technician only, or where a black person is made a CEO decisions being taken by other persons below him in the entity.

What are the powers of the B-BBEE Commission?

We have the power to receive and act on complaints we receive from the public, or to initiate investigations on our own initiative, and thereafter make findings and recommendations.

We have the power to issue summons and question any person relevant to the investigation, as well as to obtain documents or information relevant to the case. We can also approach the court for an interdict or an order on any aspects, where necessary.

Where we find that a complaint we have investigated involves a commission of a criminal offence, we are required to refer the matter for prosecution to the National Prosecution Authority or the appropriate division of the South African Police Services.

Once investigations are completed, our findings or recommendations will be published, including on the website.

What are consequences of violating the Act?

The findings of the B-BBEE Commission can lead to cancellation of contracts that the entity investigated has with government or government entities.

Parties found guilty could be fined up to 10% of their annual turnover if they are juristic persons or imprisoned for up to ten (10) years if they are natural persons.

Parties can also be excluded from doing business with government or any government entity for a period of up to ten (10) years.

Parties who violate the Act also risk serious damage to their reputation and image, which could affect their standing and ability to attract investments or contracts, as well as legal exposure from being sued by others.

How to complain to the B-BBEE Commission?

Any person can lodge a complaint with us by submitting a completed FORM B-BBEE 7 and state the nature of the complaint.

Specifically, a person is required to provide the following information on the Form:

- a description of the conduct or practice alleged to be in contravention of the Act;
- particulars of a person, sphere of government, entity or organ of state alleged to be in contravention with the Act;
- name and contact details of any person that may provide information that is relevant to the complaint to the Commission;
- information on measures taken by the complainant to attempt to resolve the complaint, including alternative dispute resolution measures, prior to lodging the complaint; and
- the way in which the alleged contravention may in the opinion of the complainant be addressed

In submitting the Form, the complainant is requested to attach any relevant information such as shareholders' contracts, B-BBEE Certificates and company registration certificates to assist us to better understand your complaint.

On receipt of the complaint, we will acknowledge receipt and issue a case number to the complainant within five (5) days. We may request further information by issuing FORM B-

BBEE 8. In terms of section 13L, a person may claim that all or part of that information is confidential and the claim must be supported by a written statement explaining why the information is confidential.

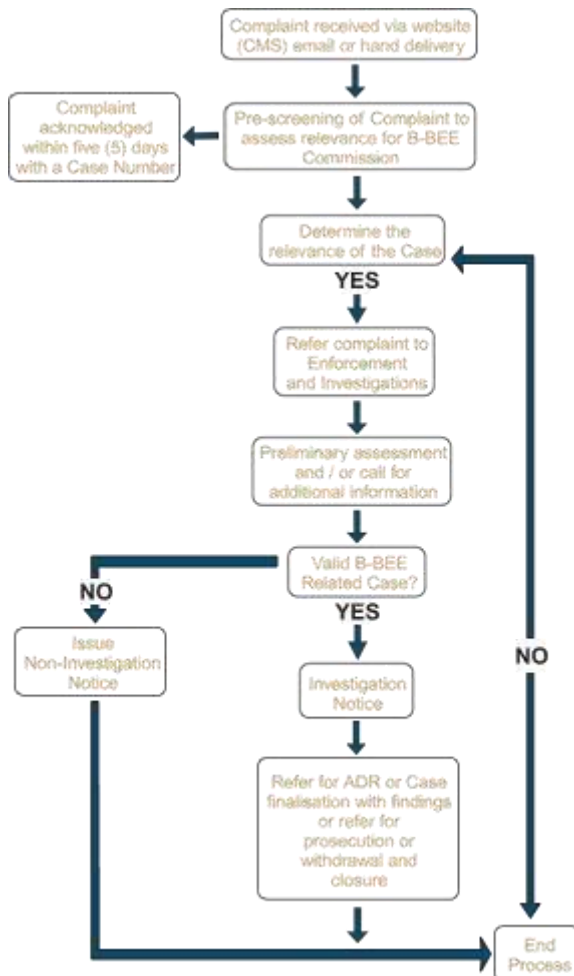
What can be the outcome of the complaint?

We assess all complaints we receive, and will issue a notice of non-investigation to the complainant in FORM B-BBEE 11, if we are of the view that (a) we have no jurisdiction to look into the matter; or (b) a complaint does not warrant an investigation.

Where there is jurisdiction and the complaint warrants an investigation, a Notice of Investigation will be issued. The investigation can include summons and formal hearings.

Findings and recommendations will be made. Prosecution will therefore be pursued where determined.

The Lodge a Complaint Process – using B-BBEE Form 7



How to contact us?

You may write, e-mail, phone, visit our offices or complete the complaint form online on the website.

B-BBEE Commission
420 Witch-Hazel Avenue
Eco Glades 2
Block C, Eco Park
Centurion
0144

the dti Postal Address
Private Bag X84
Pretoria
0144

Tel: (+27) 12 649 0910

Email: MRamare@beecommission.gov.za

the dti customer Contact centre: 0861 843 384

Website: www.bbbeeecommission.co.za