



FRONTING PRACTICES

WHAT IS THE OBJECTIVE OF THE B-BBEE ACT?

The objective of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”) is to facilitate the implementation of broad-based black economic empowerment.

Broad-based black economic empowerment means the viable economic empowerment of all black people [including, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but not limited to—

- (a) Increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- (c) Human resource and skills development;
- (d) Achieving equitable representation in all occupational categories and levels in the workforce;
- (e) Preferential procurement from enterprises that are owned or managed by black people; and
- (f) Investment in enterprises that are owned or managed by black people.

DEFINITION OF FRONTING AND FRONTING PRACTICES IN TERMS OF THE B-BBEE ACT

“Fronting” means a deliberate circumvention or attempted circumvention of the B-BBEE Act and the Codes of Good Practice that came into effect on the 1st of May 2015 (the Codes). Fronting commonly involves the reliance on data or claims of compliance with the B-BBEE Act based on misrepresentation of facts, made by the party claiming compliance or by any other natural or juristic person.

“Fronting practices” include the following:

Window dressing: This includes cases wherein black people are appointed or introduced to an enterprise on the basis of tokenism and may be:

- Appointed to an enterprise, but are discouraged and/or inhibited from substantially participating in the core business and activities of the enterprise.
- Appointed to an enterprise, but are discouraged and/or inhibited from substantially participating in the stated areas and/or levels of their participation.
- Appointed to an enterprise with the sole mandate to assist the entity to circumvent the B-BBEE Act and not intention to participate in its core business and activities.

Benefit Diversion:

- The economic benefits received by an enterprise as a result of its B-BBEE status owing to the black shareholding, does not flow to black people in the ratio stipulated in the relevant legal documents

Opportunistic intermediaries: This involves the conclusion of a legal relationship where the agreement is with:

- A black person in order to achieve a level of B-BBEE that is compliant with the Codes of Good Practice without the economic benefits that would be expected to flow from that status being afforded to the black person
- With other enterprises, in order to achieve a B-BBEE status in certain defined circumstances

FRONTING INDICATORS

The following is a non-exhaustive list of fronting indicators that can assist in identifying fronting practices:

- The black people identified by an enterprise as its shareholders, in top and middle management are unaware or uncertain of their role within an enterprise;
- The black people identified by an enterprise as its shareholders, in top and middle management have roles of responsibility that differ significantly from those of their non-black peers;

- The black people who serve as top or middle management are paid significantly lower than the market norm, whereas their non-black peers earn what the market norm prescribes or more;
- There is no significant indication of active participation by black people appointed as top management in the strategic decision making level;
- An enterprise only conducts minimal or insignificant functions and does not perform the core functions that are reasonably expected of other, similar, enterprise;
- An enterprise relies on a third-party to conduct most core functions normally conducted by enterprises similar to it; and is also dependent on the third-party for operations in order to fulfil contractual obligations such as technical or operational duties; and
- An enterprise buys goods or services at a significantly higher rate than the market prescribes from a related person or shareholder.

PENALTIES AND PROHIBITIONS

A natural or juristic person convicted of fronting practice(s) in terms of the B-BBEE Act may be liable to a fine of up to 10% annual turnover or a maximum imprisonment of ten (10) years. Further, any natural or juristic person convicted of an offence in terms of the B-BBEE Act may not for a period of 10 years from date of conviction, conduct business with any organ of the state or public entity and will be registered in a register of the tender defaulters with the National Treasury.

Enterprises are encouraged to comply with the B-BBEE Act and desist from knowingly engaging or participating in conduct that would result in undermining the legislation or making use of black people as mere tokens instead of meaningful contributors towards economic growth.

Contact details:

Where you suspect possible fronting either by your enterprise and / or any other or direct involvement, contact us at:

Physical address:

B-BBEE Commission

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

Postal address:
Private Bag X31
Pretoria
0001

Tel: (+27) 12 649 0910

Email: MRamare@beecommission.gov.za

the dti customer Contact centre: 0861 843 384

Website: www.bbbeeecommission.co.za

