B-BBEE COMMISSION

a member of the dti group

Understanding the mandate of the B-BBEE Commission

Who are we?

We are the Broad-Based Black Economic Empowerment Commission ("B-BBEE Commission") that is established as an entity within the administration of the Department of Trade, Industry and Competition ("**the dtic**") in terms of the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended by Act 46 of 2013 ("the Act").

We started operations from 1 April 2016 as a regulatory entity that oversees the implementation of the Act, which includes acting against fronting practices and other violations of the Act.

How far does our mandate stretch?

As a regulatory entity, we have jurisdiction throughout South Africa, and are required by law to act with impartiality and perform our functions without fear, favour or prejudice. Therefore, it does not matter where the complaint comes from or where a B-BBEE initiative is implemented, for as long as it is within South Africa we have the power to deal with it.

We look at B-BBEE initiatives or matters that occurred on or after 24 October 2014, but where an initiative was concluded before this date but continues to be in operation after the date, we have powers to deal with a violation that emanates from such initiative.

In doing our work, we are guided by the Act, which includes regulations and codes of good practice issued in terms of the Act.

What is our mandate?

Our mandate is covered in section 13F of the Act, which includes receiving and investigating complaints, registering ownership deals above R25 million and analysing annual compliance reports. The following are the functions in detail:

- Overseeing, supervising and promoting adherence with the B-BBEE Act in the public interest;
- Strengthening and fostering collaboration between public and private sector in order to promote and safeguard the objectives of B-BBEE;
- Receiving complaints relating to B-BBEE in accordance with the provisions of the Act;
- Investigate either on its own initiative or in response to complaints received, any matter concerning B-BBEE;
- Promoting advocacy, access to opportunities and educational programmes and initiatives of B-BBEE;
- Maintaining a registry of major B-BBEE transactions with the value of R25 million and above;
- Receiving and analyse such reports as may be prescribed concerning B-BBEE from organs of state, public entities and private sector enterprises;
- Promoting good governance and accountability by creating an effective and efficient environment for the promotion and implementation of B-BBEE; and
- Exercising such powers which are not in conflict with this Act as may be conferred on the Commission in writing by the Minister.

We are also responsible for increasing knowledge and promote public awareness on matters relating B-BBEE, and for providing guidance and advice through explanatory notices, non-binding opinions on the interpretation, or by applying to a court for a declaratory order on the interpretation or application of the provisions of the Act. We also conduct and publish research from time to time.

What services do we offer?

To effectively carry out our mandate, we have adopted both the compliance driven strategy as well as the corrective enforcement strategy. Our compliance strategy includes advisory services, guidance and general compliance monitoring with the view to achieve voluntary compliance, which includes providing reports and trends on B-BBEE, while our corrective enforcement strategy entails interventions on identified violations and introduce

measures to correct behaviour or provide redress, this includes alternative dispute resolution and referral for prosecution in cases of serious violations.

Simply put, to encourage voluntary compliance we have interventions that do not involve a formal investigation. In this regard, we provide guidance and application and interpretation of the Act, conduct awareness sessions/workshops, provide non-binding advisory opinions and written clarifications, issue advisory letters on apparent non-compliance, conduct site visits pursuant to tipoffs received, assesses and declare B-BBEE certificates and B-BBEE sworn affidavits invalid, issue instructions on misleading adverts on B-BBEE, amongst other activities, to achieve the proper implementation of the Act.

On the other hand, the corrective and enforcement strategy is concerned with correcting and remedying violations that have been brought about through a complaint or initiation of an investigation. In this regard, based on the merits of a matter, we may facilitate Alternative Dispute Resolution (ADR), which incorporates specific undertakings to remedy the apparent violation, or issue remedial recommendations pursuant to adverse findings on the matter to remedy the adverse findings in the interest of the public and the objectives of the B-BBEE Act.

The ADR approach seeks to afford the entity under investigation an opportunity, before and/or after adverse findings are made against it, to remedy the conduct. If an ADR agreement is reached, no findings are issued and the ADR Agreement becomes the outcome of the investigation.

In respect of remedial recommendations made pursuant to adverse findings, the entity is afforded an opportunity to agree or disagree to adhere to the remedial recommendations made, and where it does not agree to implement them, the actions permitted in the Act, including referral for prosecution through the criminal justice enforcement agencies, are pursued.

It is important to understand the stages for the application of each of the two strategies adopted, bearing in mind that we are not empowered to absolve any entity from criminal prosecution if the violation involves blatant criminality.

What can a person complain to us about?

Any person can lodge a complaint with us directly or anonymously on any matter relating to B-BBEE, such as fronting and misrepresentation. Examples of matters that can be reported to us include, but not limited, to the following:

- Use of a B-BBEE certificate issued under the generic codes of good practice while the entity operates in a sector that is governed by a sector code.
- Trading with a B-BBEE certificate that is not issued by a verification agency accredited by the South African National Accreditation System.
- Appointing black people as directors for tokenism and restricting their participation in the decision-making processes of the entity or access to financial information.
- Denying black shareholders dividends based on fact that they acquired the shares at no cost.
- The economic benefits received by an entity as a results of its B-BBEE status owing to black shareholding do not flow to black people in the ratio stipulated in the relevant legal documents.
- Black people identified by an entity as its shareholders, in top and middle management are unaware or uncertain of their role within an enterprise.
- Creating a front entity just to access government opportunities that require B-BBEE compliance.

What do we not deal with?

Not all disputes that involve beneficiaries of B-BBEE initiatives amount to violation of the Act. As we are mandated to address only matters that fall within the Act, we are not allowed to intervene in respect of disputes or complaints that fall outside our mandate, such as labour, contractual or shareholder disputes that are dealt with in other laws.

Examples of matters we cannot deal with include but not limited to the following:

- Contractual disputes: when a supplier has not received payment for services rendered, or contract was terminated etc.
- Procurement process: where a white entity has been appointed instead of a black owned entity.
- Labour disputes: where an employee is dismissed for any reason.
- Discriminatory practices: that an employee is paid differently from another on the basis of gender or race.
- Shareholders disputes: disagreement on the implementation of companies' strategy or appointment of directors, or buying shares of the exiting shareholder.
- Directors disputes: unlawful removal of directors or deadlocks between white and black shareholders.
- Anticompetitive practices involving unfair competition, abuse of dominance or barriers of entry to markets.

Where we can, we will assist by referring to regulatory entities that we have concluded memoranda of understanding with such as the Companies' Tribunal, Competition Commission, Companies and Intellectual Property Commission, Commission of Employment Equity. It is important to approach relevant regulatory entities directly to have matters attended to speedily.

How to reach us?

We can be reached via email at MRamare@beecommission.gov.za or by telephone on 012 394 1535 or 082 903 6398. Our offices are located at **the dtic** Campus, Block F, 2nd Floor, 77 Meintjies Street, Sunnyside, Pretoria 0001. You can also visit our website www.bbbeecommission.co.za for further information on our mandate and functions or to be updated on the latest developments relating to B-BBEE. Our tipoff details are tipoff@beecommission.gov.za or alternatively use MRamare@beecommission.gov.za