# FINDINGS AND RECOMMENDATIONS IN THE MATTER OF
# KEITH LEVENSTEIN // SAB&T BEE SERVICES (PTY) LTD & ANOTHER

***Summary***: *Complainant is Mr Keith Levenstein - Respondents are SAB&T BEE Services (Pty) Ltd and Ms Shameema Ismail – Allegations - issuing of B-BBEE Certificate using old financial statements - Findings - conduct improper, contrary to ethical conduct expected of verification professionals/agents, the standards applicable and the objectives of the B-BBEE Act, and may amount to misrepresentation or attempt to misrepresent the B-BBEE status of measured entity and failure by the verification professional to report this conduct - Recommendations - Respondents to issue public apology, submit sworn undertaking to comply with B-BBEE Act, commission an independent audit and refund all entities in which old financial statements were used to verify them for 2014 to 2016 – failing which referral for prosecution, to SANAS, IRBA and court*

## *1. Introduction*

1.1 The Broad-Based Black Economic Empowerment Commission ("B-BBEE Commission") is established in terms of section 13B 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").

1.2 The B-BBEE Commission is empowered to conduct investigations on any matter arising from the application of the B-BBEE Act, including any B-BBEE initiative or a category of B-BBEE initiatives, in terms of section 13F (1) (d) and section 13J (1) of B-BBEE Act, read with regulation 15 of the Regulations Regulating the Administration and Implementation of the B-BBEE Act and the Functions of the B-BBEE Commission, 2016 ("B-BBEE Regulations").

1.3 Upon investigations, the B-BBEE Commission may in terms of section 13J (7) (a) of the B-BBEE Act, read with regulation 15 (12) (c) of the B-BBEE Regulations, publish any finding or recommendation it has made in such a manner as it may deem fit. This publication is therefore issued in line with these provisions of the B-BBEE Act and in the interest of the public.

*2. Brief description of the complaint*

2.1 The investigation was in response to a complaint lodged by a certain Mr Keith Levenstein alleging practices that are contrary to the objectives of the B-BBEE Act against Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd as summarised below:

2.1.1 that Ms Shameema Ismail, an auditor for SAB&T BEE Services (Pty) Ltd, registered with the Independent Regulatory Board for Auditors (IRBA), has issued two B-BBEE Certificates to a close corporation named Verve Marketing and Communications CC;

2.1.2 that the said B-BBEE Certificates bore certificate number 12723-140714 and 16822-080415 and were respectively issued for the verification periods of 2014-2015 and 2015-2016; and

2.1.3 that the said B-BBEE Certificates in question achieved the exact same score for each of the B-BBEE elements without achieving maximum points, which is improbable.

*3. Findings of the B-BBEE Commission*

3.1 Having investigated the allegations, the B-BBEE Commission has made the following findings:

3.1.1 that the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd of issuing the B-BBEE Certificate based on the old financials and same data repeatedly in the verification of Verve Marketing and Communications CC for 2014/2015 and 2015/2016 is contrary to the ethical conduct expected in terms of South African Standard on Assurance Engagements 3502: Assurance Engagements on Broad-Based Black Economic Empowerment (B-BBEE) Verification Certificates, which also requires auditors to comply with ethical requirements and to plan and perform their engagement to obtain limited assurance about whether the B-BBEE Certificate is free from material misstatement;

3.1.2 that the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd in proceeding to re-verify Verve Marketing and Communications CC using same data during the validity period of the 2014/2015 B-BBEE Certificate, whether or not on the request of Verve Marketing and Communications CC, without proof or evidence of any significant or material change in the circumstances of Verve Marketing and

Communications CC to justify the re-verification in that period, is contrary to the requirements of South African Standard on Assurance Engagements 3502: Assurance Engagements on Broad-Based Black Economic Empowerment (B-BBEE) Verification Certificates, including SASAE A19 and A34;

3.1.3 that the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd in proceeding to re-verify Verve Marketing and Communications CC using same data during the validity period of the 2014/2015 B-BBEE Certificate, whether or not on the request of Verve Marketing and Communications CC, without proof or evidence of any significant or material change in the circumstances of Verve Marketing and Communications CC to justify the re-verification in that period, resulted in the deliberate extension of the validity of the B-BBEE Certificate of Verve Marketing and Communications CC for 2014/2015 thereby misrepresenting the B-BBEE status of Verve Marketing and Communications for the nine (9) months so extended in a manner that clearly aimed to evade the coming into effect of the new Codes of Good Practice of 2013;

3.1.4 that in performing the verification function, Ms Shameema Ismail failed to use her professional scepticism and due diligence when assessing information from Verve Marketing and Communications CC thereby incorrectly allocating B-BBEE points based on incorrect financial statements and subsequently issuing a new B-BBEE Certificate for 2015/2016 which is not a true reflection of the B-BBEE points of Verve Marketing and Communications CC for the twelve (12) month period covered by such B-BBEE Certificate and thereby knowingly misrepresenting the B-BBEE status of Verve Marketing and Communications CC for 2015/2016;

3.1.5 that Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd neglected the duty to adhere to guidelines as required by South African Standard on Assurance Engagements 3502: Assurance Engagements on Broad-Based Black Economic Empowerment (B-BBEE) Verification Certificates, in that the B-BBEE approved registered auditor and engagement team must consider guidance from **the dti**'s Framework for Accreditation and Verification by all Verification Agencies ("the Verification Manual") which contains the Methodologies for Verification of B-BBEE Codes of Good Practice that provide practical guidance when evaluating the subject matter and determining the scores for the B-BBEE Scorecard, in accordance with the applicable criteria;

3.1.6 that the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd in failing to evaluate necessary and new information for the 2015/2016 verification process resulted in Verve Marketing and Communications CC maintaining a B-BBEE Contributor Level 4 (four) based on already assured information in a manner that resulted in the deliberate extension of the validity of the B-BBEE Certificate of 2014/2015 based on the same data to avoid the imminent effect of downgrading and/or discounting in the Codes of Good Practice of 2013 given that Verve Marketing and Communications CC has 0% black ownership, an element that has become a priority in the Codes of Good Practice of 2013;

3.1.7 that the conduct of Ms Shameema Ismail and SAB & T BEE Services (Pty) Ltd in technically extending the validity of the 2014/2015 B-BBEE Certificate of Verve Marketing and Communications CC by nine (9) months resulted in the impression that Verve Marketing and Communications CC has been consistent in maintaining a B-BBEE Contributor Level 4 in 2015/2016 when it may not be case as such had not been verified based on the correct financial statements, and thereby misleading as to the actual B-BBEE status of Verve Marketing and Communications CC for 2015/2016;

3.1.8 that in improperly issuing a B-BBEE Certificate based on the same data aimed at deliberately extending the validity of the B-BBEE status of Verve Marketing and Communications CC into 2015/2016, Ms Shameema Ismail compromised her position as a verification professional, and a highly critical role of a technical signatory, in a manner that resulted in misrepresentation of B-BBEE status of Verve Marketing and Communications CC for 2015/2016;

3.1.9 that the averment by Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd that Verve Marketing and Communications CC requested that the old financial information that had previously been verified be used and that this was a trend in the whole verification industry, is not a valid or justifiable reason for improperly issuing the B-BBEE Certificate to Verve Marketing and Communications CC, and renders the 2015/2016 B-BBEE Certificate issued to Verve Marketing and Communication CC invalid while noting that the said B-BBEE Certificate had expired already;

3.1.10 that the letter provided to the B-BBEE Commission by SAB&T BEE Services (Pty) Ltd purporting to be a request from Verve Marketing and Communications CC for SAB&T BEE Services (Pty) Ltd to use old financials is not acceptable reason to

justify the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd, as Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd should have refused such a request because their ethical and professional standing does not permit that they be unduly influenced given the need for independence in the verification process;

3.1.11 that on becoming aware of the purported misrepresentation by Verve Marketing and Communications CC when the request to use old financials was made and as alerted by the Complainant that the conduct in question is contrary to the verification process before the complaint was lodged, Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd ought to have reported the matter as required in terms of section 13O (2) of the B-BBEE Act, but instead they failed to do so and aided Verve Marketing and Communications CC in misrepresenting its B-BBEE status for the 2015/2016 period, undermining the need for integrity of the verification process and misleading other entities that do business or engage with Verve Marketing and Communications CC;

3.1.12 that the professional standing and positions of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd placed them in a position where they knew or ought to have known that conducting verification of Verve Marketing and Communications CC for 2015/2016 based on old information is improper and may amount to misrepresentation of the B-BBEE status of Verve Marketing and Communications CC for 2015/2016; and

3.1.13 that the conduct by Ms Shameema Ismail or SAB&T BEE Services (Pty) Ltd as outlined above is contrary to the objectives of the B-BBEE Act, frustrates and undermines the implementation of the Codes of Good Practice of 2013, deviates from the procedures set out in South African Standard on Assurance Engagements 3502: Assurance Engagements on Broad-Based Black Economic Empowerment (B-BBEE) Verification Certificates and may amount to an offence in terms of section 13O (1) (a) and section 13O (2) of the B-BBEE Act.

## *4 Recommendations of the B-BBEE Commission*

4.1 Based on the above findings the B-BBEE Commission has made the following recommendations, which it considers appropriate to address the issues relating to this complaint:

4.1.1 that Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd must within **ten (10)** days of the findings issue a written public apology for this conduct, the contents of which must be approved by the B-BBEE Commission, and must circulate the public apology to all clients in their verification responsibility and further place the public apology on the website of SAB&T BEE Services (Pty) Ltd for *a* period of **thirty (30)** days;

4.1.2 that Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd must make a written undertaking under oath that Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd will fully abide by the B-BBEE Act and seek advice from the B-BBEE Commission when in doubt on any matter relating to B-BBEE, and such undertaking must be submitted to the B-BBEE Commission within **ten (10)** days of the findings;

4.1.3 that SAB&T BEE Services (Pty) Ltd must commission an independent audit of all B-BBEE Certificates issued in 2014/2015 and 2015/2016 to identify any other B-BBEE Certificates that were issued by Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd using the approach they adopted in the verification of Verve Marketing and Communications CC, and submit a report of such independent audit to the B-BBEE Commission within **sixty (60)** days of the findings; and

4.1.4 that Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd must thereafter refund all measured entities that the independent audit will identify to have been improperly verified and issued with B-BBEE Certificates in the approach used in verifying Verve Marketing and Communications CC, and send proof of refund to the B-BBEE Commission within **thirty (30)** days of the independent audit report being submitted to and accepted by the B-BBEE Commission.

4.2 The B-BBEE Commission has resolved that in the event that any of the recommendations outlined in sub-paragraph 4.1 above are not implemented as agreed to by Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd, the following further recommendations are to be implemented:

4.2.1 that the B-BBEE Commission refer the matter to an appropriate law enforcement agency for criminal investigation and to the National Prosecution Authority for prosecution in terms of section 13J (5) of the B-BBEE Act;

4.2.2 that the B-BBEE Commission refer its findings on this matter to SANAS for the purposes of seeking a suspension of the accreditation of SAB&T BEE Services (Pty) Ltd, so that its directors and officers are collectively and individually barred from conducting B-BBEE verification of any business for a specified period;

4.2.3 that as the accreditation by SANAS in respect of this matter is regarded as authorisation or concession within the context of section 13A of the B-BBEE Act, the B-BBEE Commission refer to and advise that SANAS immediately suspend SAB&T BEE Services (Pty) Ltd's accreditation, without prejudice to any other remedies given that this involves a misrepresentation which undermines verification process;

4.2.4 that the B-BBEE Commission refer the findings to IRBA for an investigation and appropriate remedy under the Audit Professions Act in respect of the conduct of Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd; and

4.2.5 that the B-BBEE Commission consider approaching the court in terms of section 13J (4) of the B-BBEE Act to restrain the apparent breach of the B-BBEE Act and/or to seek appropriate remedial relief against Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd.

4.3 In arriving at the recommendations, the B-BBEE Commission has also taken into account, amongst other things, the level of cooperation from the parties and the extent to which such recommendations will advance the achievement of the objectives of the B-BBEE Act.

4.4 Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd have agreed to the recommendations set out in sub-paragraph 4.1 above to resolve this matter.

*5. Commencement date for implementation of recommendations*

5.1 The B-BBEE Commission has granted Ms Shameema Ismail and SAB&T BEE Services (Pty) Ltd an extension to commence with the implementation of the recommendations effective from the **8th of January 2018**. Reference to 'days' in the recommendations above means calendar days unless stated otherwise.

*6. Status of this publication*

6.1 This publication is prepared only for the purpose of publishing the findings and recommendations of the B-BBEE Commission on this matter, but does not constitute an investigation report.

*7. Conclusion*

7.1 The B-BBEE Commission has taken all due care in preparing this publication, and should there be any errors or should you require any clarity regarding the contents of this publication, please do not hesitate to contact us immediately.

7.2 This publication will also be available on the website of the B-BBEE Commission from the date of its release and it will be circulated to the public through channels that the B-BBEE Commission deems fit.

7.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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