



Presentation to the Portfolio  
Committee on Trade and Industry  
by the B-BBEE Commission on  
Activities for 2020/2021 Financial  
Year

15 February 2022

# Mandate under the B-BBEE Act

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❑ Established by the B-BBEE Act in terms of section 13B and functions are outline in section 13F as follows:

- *Oversee*, supervise and promote adherence with the B-BBEE Act in the public interest
- *Strengthen* and foster collaboration between public and private sector to safeguard objectives
- Receive *complaints* and investigate complaints proactively and/or reactively
- Promote *advocacy and access* to opportunities, educational programmes and B-BBEE initiatives
- Maintain *registry* of major B-BBEE transactions (R25 million)
- Receive and analyse *compliance reports* (JSE, SETAs, state organs)
- Promote *good governance and accountability*
- Increase *knowledge and awareness* on B-BBEE
- Exercise any power conferred by the Minister in writing, which does not conflict with the B-BBEE Act

# Strategy Implemented

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## Compliance Driven Strategy

- Advisory opinions & Clarifications
- Compliance Reports
- Major B-BBEE transactions
- Explanatory Notices
- Practice Guides/Brochures
- Advisory Letters
- Education & Awareness sessions
- Advisory Stakeholder meetings
- Site visits for tip-offs/reports

## Corrective Enforcement Strategy

- Complaints
- Non-Investigations
- Investigations
- Site visits for investigations
- Alternative dispute resolution
- Findings
- Remedial recommendations
- Referral to other regulators
- Referral for criminal prosecution

# Core Processes and Timelines

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## Complaint

B-BBEE7 Form

Alternative Dispute  
Resolution

Findings and  
Recommendations

Up to 12 months to  
investigate



## Advisory Opinion

Explanatory Note on  
Procedure issued

Non-binding and based  
on set of facts

Provide within 30 days



## Registration of Major B-BBEE transaction

Based on Threshold

Certificate of Registration  
within 10 days

Feedback on merit within  
90 days



## Compliance Report

JSE Listed, SETA, Organs of  
State, public entity

Sector Council

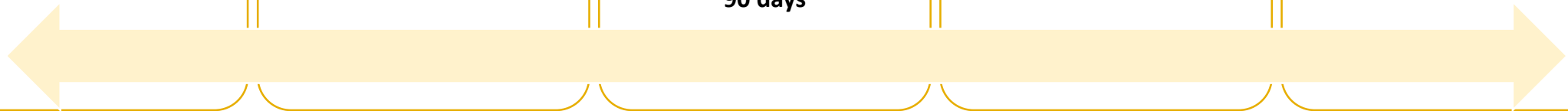
Consider report within 90  
days



## Written Clarification

General interpretation or  
application of B-BBEE

Issued within 5 days



- *All timelines achieved/exceeded except the 12 months for set for investigations*



# Compliance with Employment Equity (EE) Act

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| Employment Equity as at 2020/21 |         |       |          |       |       |         |       |          |       |       |       |      |
|---------------------------------|---------|-------|----------|-------|-------|---------|-------|----------|-------|-------|-------|------|
| Gender                          | Male    |       |          |       |       | Female  |       |          |       |       | Total | PWD  |
| Race                            | African | Asian | Coloured | White | Total | African | Asian | Coloured | White | Total |       |      |
| SMS (13-16)                     | 1       | 0     | 0        | 0     | 1     | 5       | 0     | 0        | 1     | 6     | 7     | 0    |
| MMS (11&12)                     | 7       | 0     | 0        | 0     | 7     | 0       | 0     | 0        | 0     | 0     | 7     | 0    |
| ASD (9&10)                      | 1       | 0     | 0        | 0     | 1     | 2       | 0     | 0        | 0     | 2     | 3     | 0    |
| Level 6-8                       | 0       | 0     | 0        | 0     | 0     | 0       | 0     | 0        | 0     | 0     | 0     | 0    |
| Level 1-5                       | 9       | 0     | 0        | 0     | 9     | 13      | 0     | 0        | 0     | 13    | 22    | 0    |
| Total                           | 18      | 0     | 0        | 0     | 18    | 20      | 0     | 0        | 1     | 21    | 39    | 0    |
| EE (Actual)                     | 46.00   | 0.0   | 0.0      | 0.0   | 46.00 | 51.00   | 0.0   | 0.0      | 3.00  | 54.00 | -     | 0.0  |
| EE (Target)                     | 39.20   | 1.90  | 6.10     | 6.70  | 53.9  | 34.20   | 1.10  | 5.20     | 5.50  | 46.00 | -     | 2.00 |

| % of women at SMS level | Actual | Target |
|-------------------------|--------|--------|
|                         | 86%    | 50%    |

- Only designated groups qualify under EE Act
- New recruitment must improve persons with disability

Source: Commission

# Staff Establishment & Vacancy Rate as at 2020/21 6

| Division                              | Approved Posts | Filled Posts | Vacancy Rate |
|---------------------------------------|----------------|--------------|--------------|
| Office of the Commissioner            | 5              | 2            | 60%          |
| Organisational Strategy & Performance | 15             | 2            | 87%          |
| Compliance                            | 25             | 3            | 88%          |
| Research, Analysis & Reporting        | 12             | 0            | 100%         |
| Investigation & Enforcement           | 17             | 6            | 65%          |
| Legal Support & Prosecutions          | 8              | 0            | 100%         |
| Operations                            | 31             | 7            | 77%          |
| <b>Total Posts</b>                    | <b>113</b>     | <b>20</b>    | <b>82%</b>   |

- *Interns/Trainees absorbed additional to establishment as Administrative Clerks are 19 (nineteen)*
- *Intern that is currently on board is 1 (one)*
- *0% budget for compensation of employees due entity not listed as public entity under PFMA since 2016*

Source: Commission

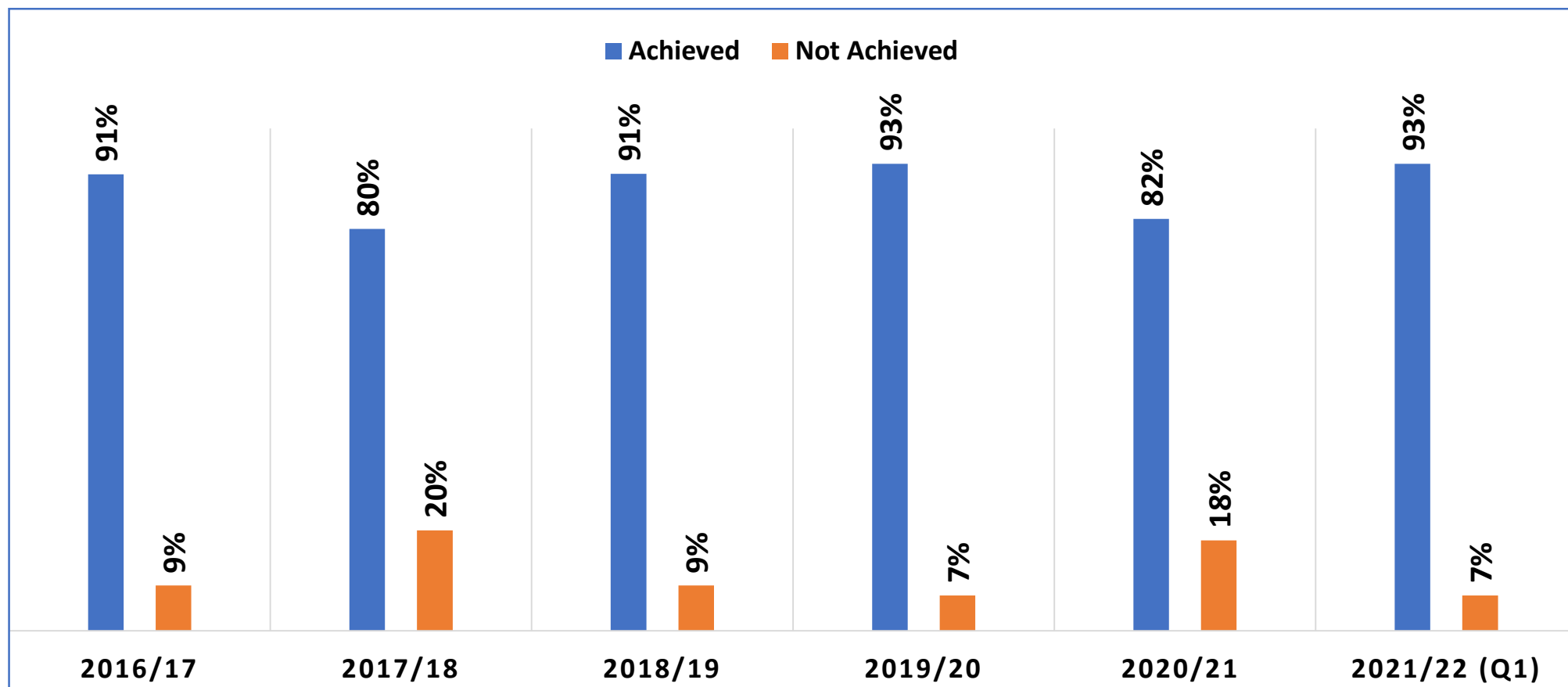
# Finances for 2020/21

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| Description of item       | Budget for the quarter R'000 | Actual expenditure for the quarter R'000 | Variance for the quarter R'000 | % Variance     | Year to date Budget R'000 | YTD Actual expenditure R'000 | YTD Variance R'000 | Annual budget R'000 | Year-end Forecast R'000 | Year-end Variance R'000 |
|---------------------------|------------------------------|--|--------------------------------|----------------|---------------------------|------------------------------|--------------------|---------------------|-------------------------|-------------------------|
| Compensation of Employees | 0                            | 24 853                                   | (24 853)                       | 0%             | 0                         | 24 853                       | (24 853)           | 0                   | 24 853                  | -24 853                 |
| Goods and Services        | 8 402                        | 5 335                                    | 3 067                          | 36.5%          | 8 402                     | 5 335                        | 3 067              | 8 402               | 5 335                   | 3 067                   |
| Households                | 0                            | 20                                       | (20)                           | 0%             | 0                         | 20                           | (20)               | 0                   | 20                      | 0                       |
| Machinery and Equipment   | 0                            | 0  | 0                              | 0%             | 0                         | 0                            | 0                  | 0                   | 0                       | 0                       |
| <b>TOTAL</b>              | <b>8 402</b>                 | <b>30 208</b>                            | <b>21 806</b>                  | <b>259.53%</b> | <b>8 402</b>              | <b>30 208</b>                | <b>21 806</b>      | <b>8 402</b>        | <b>30 208</b>           | <b>(21 786)</b>         |

# Organisational Performance Record

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- *Performed consistently well - Average 87,4% against the Annual Performance Plan (APP)*
- *Milestones not achieved had external dependencies, such as SITA processes*

Source: Commission



# B-BBEE Context, Frameworks & Status

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- ❑ B-BBEE Act was passed in 2003 (Act 53 of 2003) pursuant to the equality clause in the Constitution, and amended in 2013 (Act 46 of 2013) effective from 24 October 2014. B-BBEE Commission was established to oversee the implementation of B-BBEE, including to act against fronting and misrepresentation.
- ❑ B-BBEE is defined as a viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies.
- ❑ These include increasing the number of black people who own, manage and control enterprises and productive assets, including communities, workers, co-operatives and other collective enterprises, human resource and skills development, equitable representation in all occupational categories and levels in the workforce, preferential procurement from black owned and managed enterprises and investment in enterprises that are black owned and managed.
- ❑ B-BBEE is about real and meaningful participation of black people in the ownership of the economy to achieve substantial change in the racial composition of ownership and management structures of existing and new enterprises and provide financial and non-financial to skill and develop sustainable black entrepreneurs and suppliers.

# B-BBEE Context, Frameworks & Status 10

- ❑ B-BBEE implementation and measurement is guided by the Codes of Good Practice (generic codes and the 10 approved sector codes) and measures ownership (100), management control (200), skills development (300), enterprise and supplier development (400) and socio-economic development (500).
- ❑ The public sector (organs of state & public entities) are measured using the specialised scorecard (004) which excludes the ownership element while the private sector applies the normal scorecard. Public sector must also comply with section 10 for procurement, licences, sale of state assets, public private partnerships and incentive scheme.
- ❑ Multinationals may apply for Equity Equivalent Investment Programme (EEIP) (Statement 103) at **the dtic**, which if approved means the multinational makes a financial contribution under the EEIP programme instead of entering into an equity/shareholding transaction to meet the ownership target.
- ❑ Ownership can also be achieved through the sale of assets or business to black people and this is guided by Statement 102 with the primary requirement being that the business or asset sold must be viable and vest in the hands of black people. Thus some structured sale and lease-back arrangements do not qualify for recognition under the ownership.

# B-BBEE Context, Frameworks & Status

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- ❑ Currently South Africa is the most unequal society in the world according to the World Bank. StatsSA population estimates for 2019 showed that Black people were at 92.1% and White people at 7.9% of the population. Further, economically active population (EAP) reflected Black people at 91.3% and White people at 8.7%.
- ❑ The *National Status & Trends on B-BBEE* report of the B-BBEE Commission shows overall black ownership in 2020 to be at 31% (27%: 2017) with black women ownership at 15% (9%: 2017), while the 100% black owned entities on the JSE have regressed to 0% in 2020 from 3.3% in 2019 (1%: 2017). Over 90% black people own only about 30% of the economy while white people who account for less than 10% of the population own about 70%.
- ❑ In 2020 black management control on the JSE was at 28% while the public sector was sitting at 65.8%, indicating the public sector as more reflective of the demographics of the country than the private sector. The figures regressed for the private sector when compared to previous periods.
- ❑ For the 2020 calendar year, overall contribution towards Skills Development recorded an increase to 60% (37%: 2017), which in real terms translated to R11,2 billion spent by JSE entities and R1,8 billion by public sector in the one year alone. Also increased are contributions made towards Enterprise and Supplier Development at 61% (44%: 2017) and Socio-Economic Development at 90% (88%: 2017), which should assist with economic recovery.

# B-BBEE Context, Frameworks & Status 12

- ❑ Through B-BBEE, there is potential for ownership patterns to change but increased opportunities and funding for black people to make acquisitions or create new black owned businesses must be made available to accelerate the pace.
- ❑ Based on the *Major B-BBEE Transactions Analysis Report* of the B-BBEE Commission, 95 black ownership deals filed in 2018/19 FY amounted to R 111,938 billion in transaction value while 272 filed in 2017/2018 accounted for R188,7 billion. As at 2020/21 financial year, a total of 528 transactions had been filed.
- ❑ These deals are made possible by the B-BBEE Act to facilitate the transfer of ownership to black people. To fund these deals, private sector entities contributed over 30% to vendor-finance the acquisitions, about 18% was financed by banks and 2.8% funded by government funding institutions, with 10% done as share swaps, and the rest in other mixed forms of funding. New entrants have, however, decreased possibly due to lack of funding.
- ❑ Of the 528 deals filed as at 2020/21, 148 (28%) were rejected for not complying with filing requirements and 380 were registered, however, 113 (29,7%) of the 380 registered were found to not meet the ownership test and were referred for investigation for possible fronting and misrepresentation as they failed to remedy the deals. Fronting continues to threaten the success of black economic empowerment.

# B-BBEE Context, Frameworks & Status 13

- ❑ Evidence on fronting in investigations show that some ownership deals that purport to facilitate the transfer of ownership in fact end up stripping black shareholders of participation rights, economic benefits and the ability to ultimately own the stake/asset purported to be for black people, with indicators such as reduced voting rights, non-existent dividend flow and perpetual re-financing resulting in over-indebtedness.
- ❑ As the B-BBEE Commission was set up to also investigate fronting, as at 2020/21, it handled 909 complaints and has issued findings in 423 (47%) cases, resolved 22 (2%) through Alternative Dispute Resolution (R 105 467 839.36 paid to black partners) , issued non-investigation notices in 276 (30%), which amounts to a breakthrough in about 79% of the cases handled over the period. 83% of cases handled is still on fronting.
- ❑ The complaints numbers fluctuated each year, with the highest numbers recorded in 2016/17 at 222 and 2019/20 with 243, the other years were below two hundred each. Noted though is that the quality of the complaints has improved with less notices of non-investigation being issued.
- ❑ Some entities show the upfront wish to correct alleged violations resulting in remedial recommendations that are monitored by the B-BBEE Commission. Annual compliance reporting has declined further and over 50% of JSE entities and public sector organs were referred for investigation to improve reporting.

# B-BBEE Context, Frameworks & Status

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- ❑ B-BBEE Policy and the B-BBEE Act are inherently flexible to enable efficient contributions towards economic empowerment without undue additional regulatory cost and burden on the basis of the following:
  - ❑ Balanced Score Card
  - ❑ Target based
  - ❑ B-BBEE Level 1-8 compliant status
  - ❑ Sector Codes to cater for unique features of certain sectors
  - ❑ Options of ownership recognition, including sale of assets and private equity funds
  - ❑ Equity Equivalent Investment Programme in lieu of ownership for multinationals
  - ❑ Exemption from verification for certain categories
  - ❑ Exemptions/Deviations/Permission to Exceed
  - ❑ Contributions determined on % of Net Profit After Tax and Leviable Amount
  - ❑ B-BBEE Facilitator status



# Strategic Objectives

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## Programme 1: To safeguard the outcomes of inclusive economy

| Strategic objective                           | Output                     | Achievement per Financial year |         |         |         |         | Total |
|---|----------------------------|--------------------------------|---------|---------|---------|---------|-------|
|   |                            | 2016/17                        | 2017/18 | 2018/19 | 2019/20 | 2020/21 |       |
| Guide the implementation of B-BBEE Act        | Advisory Opinions          | 48                             | 46      | 37      | 34      | 27      | 192   |
|   | Clarifications             | 391                            | 1212    | 1335    | 1603    | 1613    | 6154  |
|   | Practice Notes / Guideline | 3                              | 4       | 2       | 3       | 2       | 14    |
|   | Brochures                  | 0                              | 2       | 5       | 4       | 5       | 16    |
|   | Education & Awareness      | 174                            |         |         | 86      | 40      | 300   |
| Assess B-BBEE Transactions and provide advice | Received                   | 272                            |         | 95      | 109     | 52      | 528   |
|   | Registered                 | 183                            |         | 70      | 83      | 44      | 380   |
|   | Involve Trust              | 95                             |         | 20      | 21      | 12      | 148   |
|   | Rejected                   | 89                             |         | 25      | 26      | 8       | 148   |

# Strategic Objectives

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## Programme 1: To safeguard the outcomes of inclusive economy

| Strategic objective                         | Output                            | Achievement per Financial year |         |         |         |         | Total      |
|---|-----------------------------------|--------------------------------|---------|---------|---------|---------|------------|
|   |                                   | 2016/17                        | 2017/18 | 2018/19 | 2019/20 | 2020/21 |            |
| Assess Compliance Report & provide feedback | Received                          | 202                            | 270     | 205     | 166     |         | Av. 211 PA |
|   | Assessed                          | 191                            | 156     | 196     | 163     |         | Av. 177 PA |
|   | JSE Listed                        | 181                            | 147     | 158     | 126     |         | Av. 153 PA |
|   | Public Entities & Organs of State | 21                             | 21      | 47      | 37      |         | Av. 32 PA  |
|   | SETAs                             | 0                              | 2       | 3       | 3       |         | Av. 2 PA   |

# Strategic Objectives

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## Programme 2: To implement corrective enforcement to achieve compliance

| Strategic objective                                     | Output                                     | Achievement per Financial year |         |         |         |         | Total |
|---|--|--------------------------------|---------|---------|---------|---------|-------|
|   |  | 2016/17                        | 2017/18 | 2018/19 | 2019/20 | 2020/21 |       |
| Conduct both proactive and reactive Investigation       | Investigation findings                     | 371                            |         |         |         | 52      | 423   |
| Facilitate and guide resolution of dispute through ADR  | ADR Agreements [r15(11)]                   | 22                             |         |         |         | 0       | 22    |
| Referral to other regulatory entities & for prosecution | Notice of referral [s13J (6)] & [s13J (5)] | 24                             |         |         |         | 2       | 26    |

## Strategic Objectives

### Programme 3 & 4: Researching, analysing and reporting on state of transformation & Collaborating with relevant stakeholders to advance transformation

#### Programme 3: Researching, analysing and reporting on state of transformation

| Strategic objective                          | Output                          | Achievement per Financial year |         |         |         |         | Total |
|--|---------------------------------|--------------------------------|---------|---------|---------|---------|-------|
|  |                                 | 2016/17                        | 2017/18 | 2018/19 | 2019/20 | 2020/21 |       |
| Report on National Status and Transformation | National Status Annual Report   | 1                              | 1       | 1       | 1       | 1       | 5     |
|  | Major B-BBEE Transaction Report | 0                              | 0       | 1       | 1       | 0       | 2     |

#### Programme 4: Collaborating with relevant stakeholders to advance transformation

| Strategic objective                                   | Output                   | Achievement per Financial year |         |         |         |         | Total |
|---|--------------------------|--------------------------------|---------|---------|---------|---------|-------|
|   |                          | 2016/17                        | 2017/18 | 2018/19 | 2019/20 | 2020/21 |       |
| Build Mutual relationships with selected stakeholders | Memoranda of Cooperation | 1                              | 3       | 3       | 2       | 1       | 10    |

# 2020/21 Performance against APP Programme 1 & 2

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| Strategic Outcomes-Oriented Goal                  | Strategic Objective/ Output                    | Performance Indicator/ Measure   | Targets    | Report for 2020/21 FY   |
|---|--|--|------------|---|
|   |  |  | 2020/21    |   |
| Safeguarding the outcomes of an inclusive economy | Guide implementation of the Act                | Number of days taken to provide advice to clients                              | 30 days    | 27 Advisory Opinions<br>1613 Written Clarifications   |
|   |  | Number of practice notes/guides developed and issued                           | 2 annually | 2 practice guides/notes (B-BBEE Service Standards; and Completion of S13G compliance matrix)  |
|   |  | Number of brochures developed and published                                    | 2 annually | 5: Loss or sale of shares; Sale of asset; Private equity Fund; updated enterprise and supplier development; and Joint venture requirements              |
|   | Assess B-BBEE transactions and provide advice  | Number of days taken to assess B-BBEE transactions and include on the register | 90 days    | 52 transactions received<br>8 rejected for non-compliance<br>0 Pending<br>44 issued with registration certificates<br>12 Trusts involved<br>44 assessed |
|   | Assess Compliance Reports and provide feedback | Number of days taken to assess compliance reports                              | 90 days    | 166 compliance reports received<br>163 Assessed and 3 within time   |

| Strategic Outcomes-Oriented Goal                          | Strategic Objective/ Output                        | Performance Indicator/ Measure  | Targets  | Report for 2020/21 FY   |
|---|--|---|--|---|
|   |  |   | 2020/21  |   |
| Implementing corrective enforcement to achieve compliance | Conduct both proactive and reactive investigations | Percentage of reports produced on investigations conducted within 12 months upon receipt of complaint | On average 80% reports produced on investigations conducted within 12 months upon receipt of complaint       | 145 complaints handled – 81,4% fronting<br>46 Issued notices of investigations<br>88 Non-investigations<br>3 summons issued |
|   |  | Encourage and guide resolution of disputes  | 100% identified cases for ADR analysed and investigated. 80% of the referred cases resolved within 6 months. | 0 cases resolved through ADR – redress to complainants  |
|   |  | Percentage of identified cases analysed & investigated for possible ADR process.                      | 100% identified cases for ADR analysed and investigated. 80% of the referred cases resolved within 6 months. | 0 cases resolved through ADR – redress to complainants  |
|   |  | Percentage of ADR conditions monitored  | 100% of ADR conditions monitored   | None  |
|   |  | Percentage of cases referred to other Regulatory entities within six (6) months                       | 100% of identified cases referred  | 2 cases referred  |
|   | Refer for prosecution when necessary               | Number of cases finalised and referred for prosecution  | 100% of the identified cases if any  | 0 cases referred to National Prosecuting Authority & South African Police Services  |

# 2020/21 Performance against APP Programme 3,4 & 5

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| Strategic Outcomes-Oriented Goal                                    | Strategic Objective/Output                          | Performance Indicator/Measure                       | Targets   | Report for 2020/21FY                        |
|---|---|---|---|---|
|   |   |   | 2020/21   |   |
| Researching, analysing and reporting on the state of transformation | Collect and analyse data by economic sectors        | Number of Sector Reports produced and data analysed | 2 Sector reports produced annually and 100% of data tracked from the B-BBEE portal system | 2 sector reports produced                   |
|   | Report on National Status and Transformation Trends | Number of 'National Status' Annual Report produced  | 1 National Status annual report   | 1 National Status and Trend Report produced |

## Programme 4: Relationship Building /Stakeholder Relations

| Strategic Outcomes-Oriented Goal                                   | Strategic Objective/Output                        | Performance Indicator/Measure   | Targets   | Report for 2020/21 FY  |
|--|---|---|---|--|
|  |   |   | 2020/21   |  |
| Collaborating with relevant stakeholders to advance transformation | Build mutual relationships with selected partners | Number of Memoranda of Understanding and Agreements concluded and published | Monitor relationship and Monitor Agreements with reports produced | Relationships monitored, agreements implemented and report produced<br><br>MoUs concluded with: Companies Tribunal; Companies, Public Protector South Africa , Companies and Intellectual Property Commission and Commission of Employment Equity (last two were renewals) |

| Strategic Outcomes-Oriented Goal   | Strategic Objective/Output                                | Performance Indicator/Measure   | Targets  | Report for 2020/21 FY   |
|--|---|---|--|---|
|  |   |   | 2020/21  |   |
| Developing capability and capacity of the Commission to deliver on its mandate | Develop an ICT strategy and infrastructure                | Develop Integrated data base (data warehouse) for the B-BBEE Commission | Implement and monitor integrated data-base (data warehouse)  | Integrated database implemented   |
|  | Develop and maintain support systems                      | Number of systems developed, implemented and monitored                  | 3 systems implemented (BBBEE Certificate & Report Portal, One Stop Portal, Events and Management System) | Implementation of the OneStop-Portal delayed due to delays in the installation of servers. Procurement of Events Management system on final stages currently finalising SLA. B-BBEE<br><br>Certificate Portal system implemented and maintained |
|  | Staff the B-BBEE Commission and develop a talent pipeline | Average percentage of officials trained                                 | 60% officials trained  | 95% of staff trained on the ownership element of the B-BBEE Act,  |
|  |   | Number of graduates on Internship and Trainee programme                 | 1  | 1 Graduate recruited and trained  |



# Highlights on Compliance

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- ❑ Production and publication of *National Status and Trends on B-BBEE* and *Major B-BBEE Transactions Analysis Reports*.
- ❑ Independent *Impact Assessment Study by DNA Economics* - found that with only 45% of the required budget and 16% of the staff required, the entity has operated effectively with 74% of complaints finalized within 12 months, and 59% of verification agencies confirming that the existence of the entity has brought the much needed alignment in B-BBEE.
- ❑ B-BBEE Annual Conference on Skills Development reaching 500 people, with 11 000 views on social media platforms. Additionally, 40 outreach sessions were held with GP 32, WC 4 and NW, KZN, NC and EC with one session each. Interviews were conducted on SABC radios and TV, Newsroom Africa and ENCA with print media reach.
- ❑ Recognition awards for exemplary skills initiatives to *Association of B-BBEE Professionals (ABP)*, *M&C Accounting (Pty) Ltd*, *Ikusasa Student Financial Aid Programme (ISFAP)* and *Entsika Consulting*.
- ❑ 7 brochures/practice guides were developed and published, with two specifically guiding on *Sale of Assets* and *Private Equity Funds*, to simplify the Act.
- ❑ Concluded MOUs with Public Protector SA, Competition Commission, Commission for Employment Equity, Companies and IP Commission and Companies Tribunal.
- ❑ Issued briefing note and media statement on High Court Ruling in PPPFA Regulations against Finance Minister regarding pre-qualification in procurement processes.

# Outreach & Awareness Sessions

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The B-BBEE Commission directly and also in partnership with other government institutions managed to reach the following rural and underdeveloped areas:

| Province      | Area  |
|---------------|---|
| Northern Cape | <ul style="list-style-type: none"> <li>• John Taolo Gaetswe District</li> <li>• Pixley District</li> <li>• ZF Mgcawu District</li> <li>• Frances Baard District</li> </ul>                                  |
| Gauteng       | <ul style="list-style-type: none"> <li>• Springs</li> <li>• Khutsong</li> <li>• Wedela</li> <li>• Vooslorus</li> </ul>  |
| Eastern Cape  | <ul style="list-style-type: none"> <li>• Bisho</li> <li>• King William Town</li> <li>• Mdantsabe</li> <li>• Pedi</li> </ul>   |
| North West    | <ul style="list-style-type: none"> <li>• Ramotshere Moila Local Municipality (LM)</li> <li>• Moses Kotane LM</li> <li>• Dr Kenneth Kaunda LM</li> <li>• Madibogo</li> <li>• Dr Ruth Segomotsi LM</li> </ul> |
| Western Cape  | <ul style="list-style-type: none"> <li>• Kayelitsha</li> <li>• Gugulethu</li> <li>• Langa</li> </ul>  |

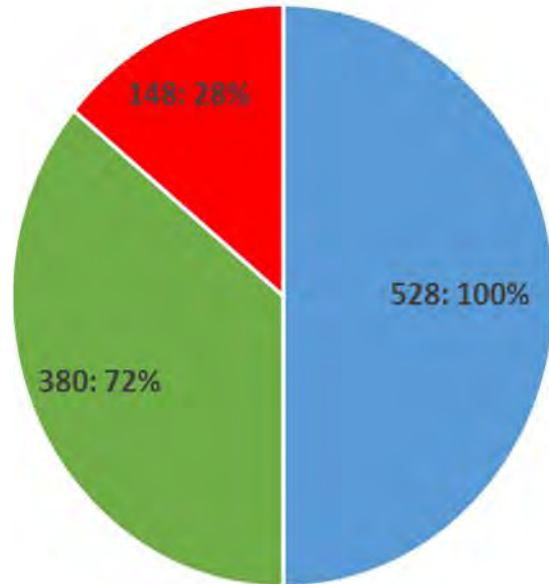
The B-BBEE Commission directly and also in partnership with other government institutions managed to reach the following rural and underdeveloped areas:

| Province      | Area  |
|---------------|---|
| Mpumalanga    | <ul style="list-style-type: none"> <li>• Gert Sibande Region</li> <li>• Nkangala Region</li> <li>• Ehlanzeni Region</li> <li>• Govern Mbeki Municipality: Secunda</li> </ul>  |
| Limpopo       | <ul style="list-style-type: none"> <li>• Sekhukune District</li> <li>• Tzaneen</li> <li>• Vhembe District</li> </ul>  |
| Free State    | <ul style="list-style-type: none"> <li>• Bethlehem</li> <li>• Kroonstad</li> <li>• Westende</li> </ul>  |
| KwaZulu Natal | <ul style="list-style-type: none"> <li>• Umfolozi LM</li> <li>• Abaqulusi LM</li> <li>• Umzimkhulu LM</li> <li>• Umkhanyakude LM</li> <li>• Kwadukuza Municipality</li> <li>• Ray Nkonyeni LM</li> <li>• Umhlabuyalingana Municipality</li> <li>• Kwayuswa</li> </ul> |

# Compliance Statistics for major transactions

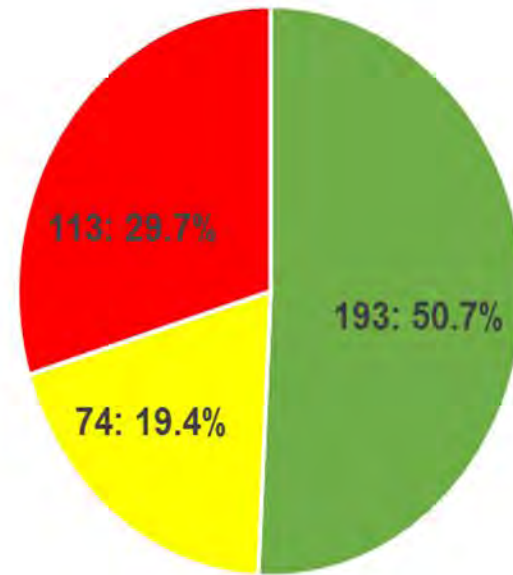
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## Transactions received and handled



■ Received Transactions ■ Registered Transactions ■ Rejected Transactions

## Status of registered transactions 2017/18-2020/21



■ Assessed and Closed ■ Pending ■ Referred for investigation

- ***52 transactions received in 2020/21 with 100% assessed and 3 referred for investigation***
- ***Improved quality and alignment in transactions registered, less transactions being rejected***
- ***List of registered transactions updated regularly on the website***

Source: B-BBEE Commission

# Compliance Statistics for Mandatory Annual Compliance Reports

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| National Status and Trends on B-BBEE Report Summary |                           | 2017                 | 2018                | 2019         | 2020         |
|---|---------------------------|----------------------|---------------------|--------------|--------------|
| Submitted Reports                                   | JSE                       | 51%<br>(401)         | 43%<br>(371)        | 42%<br>(356) | 33%<br>(314) |
|   | Organs of State & SOEs    | 1%<br>(290)          | 10%<br>(290)        | 15%<br>(290) | 9%<br>(290)  |
|   | B-BBEE Certificate Portal | 2861                 | 1674                | 5818         | 1241         |
| B-BBEE Rating<br>Level 4 - Level 1                  | JSE                       | 41%                  | 51%                 | 49%          | 55%          |
|   | Organs of State & SOEs    | N/A                  | 45%                 | 33%          | 33%          |
| B-BBEE Rating<br>Level 5 - Non-Compliant            | JSE                       | 48%<br>(12% No data) | 45%<br>(5% No data) | 51%          | 45%          |
|   | Organs of State & SOEs    | N/A                  | 55%                 | 67%          | 67%          |

Source: B-BBEE Commission

- *Compliance levels dropped in 2020/21, perhaps due to Covid-19 and other factors*
- *Over 50% of non-compliant entities and organs of state referred for investigation*
- *8 site visits to entities conducted to verify compliance with feedback provided*

# Compliance Statistics for Mandatory Annual Compliance Reports

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| National Status and Trends on B-BBEE Report Summary  |   | 2017 | 2018 | 2019 | 2020  |
|--|---|------|------|------|-------|
| <b>Overall Ownership</b><br><i>(Overall include B-BBEE Certificate data information)</i>                   |   | 27%  | 25%  | 29%  | 31%   |
| <b>Overall Black Women Ownership</b><br><i>(Overall include B-BBEE Certificate data information)</i>       |   | 9%   | 10%  | 12%  | 15%   |
| <b>JSE Listed Entities Average Black Ownership</b>   |   | 29%  | 25%  | 31%  | 28%   |
| <b>100% black owned entities on the JSE</b>  |   | 1%   | 1%   | 3%   | 0%    |
| <b>Management Control</b><br><i>(Overall include B-BBEE Certificate data information)</i>                  | JSE   | 38%  | 38%  | 44%  | 28%   |
|  | Organs of State & SOEs                      | N/A  | 79%  | 68%  | 65.8% |
|  | Overall Management Control                  | 43%  | 45%  | 39%  | 57%   |
| <b>Skills Development</b><br><i>(Overall include B-BBEE Certificate data information)</i>                  | JSE   | 35%  | 63%  | 59%  | 64%   |
|  | Organs of State & SOEs                      | N/A  | 64%  | 41%  | 32%   |
|  | Overall Skills Development                  | 37%  | 49%  | 49%  | 60%   |
| <b>Enterprise and Supplier Development</b><br><i>(Overall include B-BBEE Certificate data information)</i> | JSE   | 47%  | 70%  | 59%  | 67%   |
|  | Organs of State & SOEs                      | N/A  | 47%  | 59%  | 68%   |
|  | Overall Enterprise and Supplier Development | 44%  | 60%  | 51%  | 61%   |
| <b>Socio-Economic Development</b><br><i>(Overall include B-BBEE Certificate data information)</i>          | JSE   | 79%  | 92%  | 89%  | 93%   |
|  | Organs of State & SOEs                      | N/A  | 65%  | 53%  | 33%   |
|  | Overall Socio-Economic Development          | 88%  | 71%  | 68%  | 90%   |



# Highlights on Complaints Handling and Investigations

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- ❑ As at 2020/2021, a total of 909 complaints handled, with only 210 (21%) carried over to the next financial year, in 2020/21 specifically 145 complaints were recorded and findings issued in 52 cases with 88 notices of non-investigation issued.
- ❑ Constant monitoring of the mining, construction, transport, information and communication technology, and manufacturing sectors which recorded the highest number of the 83% fronting complaints.
- ❑ Successfully defended the High Court review application by *CRRC E LOCO (Pty) Ltd* on the Commission's decision that there was fronting practice in the joint venture arrangement between the Chinese owned shareholder and MBC Consortium for the Transnet locomotive contracts – matter also referred to SARS
- ❑ Referred to Department of Agriculture, Forestry and Fisheries a fronting practice found in the case of *Phephe Khekhe // African Tuna Traders CC & Others* where two white males engaged in fronting of black employees for purposes of obtaining fishing rights allocation, with one expiring in 2032 – this report to be tabled in Parliament for further deliberation and action, if necessary.
- ❑ Filed legal papers in defense of the review applications brought by *Cargo Carriers Limited, Sasol Oil (Pty) Ltd* and *Astra Group and Others* seeking to set aside findings of fronting made by the B-BBEE Commission.
- ❑ Publications recently were issued on cases against *Vicky Adey Consulting CC* and others as summarized in the next slide for misrepresentation.



# Highlights on Complaints Handling and Investigations

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## ❑ *B-BBEE Commission // Vicky Adey Consulting CC*

The close corporation misrepresented its B-BBEE status using the credentials of a Nigerian national Olufunsho Adebayo Ademoye. The entity had obtained CIDB grading using the false credentials and also got placed on panels of 4 organs of state for procurement purposes.

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

The company misrepresented B-BBEE status using the credential of two Chinese nationals who are just permanent residents. The entity agreed to implement remedial recommendations.

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

Mr Evert Philip Serfontein, a white male misrepresented his close corporation as 100% black owned entity arguing that he was informed by his mother before passing that his real father was a coloured man, but failed to substantiate the claim with any evidence.

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

Stellar Events (Pty) Ltd, Finsolve Solutions CC and GNL Management Services CC misrepresented B-BBEE status from the credentials of Ms. Marion Mbeiza Kafuko, a permanent resident of the Republic of South Africa. Finsolve Solutions CC and GNL Management Services CC failed to conduct proper verification.

# Successfully Completed Investigations 2020/2021

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| Complainant               | Respondent  |
|---------------------------|---|
| Solomon Motsepe           | <b>Mega Food Supplies (Pty) Ltd</b>   |
| Kommandant Ligman         | Total Inventions & Others   |
| Vincent Clarens Voges     | African Executive Imports and Export Agency cc and Another                                    |
| Pallo Mcdonald Zita       | MRCJ Distributor Services CC and Another  |
| Anna Mabelane and another | Lydenburg Auto Clinic (Pty) Ltd and another   |
| Mfanafuthi Masondo        | Isizwe Hospitality (Pty) Ltd  |
| Enos Sithole and another  | Sizabantu Plumbing Contractors CC   |
| Samuel Mabhengu           | Sizabantu Plumbing Contractors CC   |
| Phephe Khehe Elias        | African Tuna Traders cc, Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd and Others |
| Williams Steven           | <b>3Q Mahuma Concrete (Pty) Ltd</b>   |

| Complainant                           | Respondent                                      |
|---------------------------------------|---|
| William Magagula                      | Inkululeko Solutions (Pty) Ltd & SP Mine        |
| Juris Mekgwe                          | <b>Interwaste Proprietary Limited</b>           |
| Moses Khumalo                         | Wilkhum Engineering and Tooling Supplies cc     |
| Wendy Sukazi                          | BTS Electrical & Mechanical Services            |
| B-BBEE Commission                     | Cochrane Projects (Pty) Ltd                     |
| Jackson Taba                          | In The Vault 33 T/A Filerman                    |
| David Disoloane                       | AF Gatony & CO Chartered Accountants & Auditors |
| Felix Tjaone                          | Bradabri (Pty) Ltd                              |
| Nomonde Sosibo and Patricia Mohlobane | Zevoli Industries Suppliers                     |
| Lazarus Swarts and Jeffrey Twala      | Zevoli Industries Suppliers                     |

- Other cases on the list have adverse findings while no evidence of wrongdoing was found in others
- Entities marked in bold are in the process of reviewing Commission's decision in courts, and are being defended

# Successfully Completed Investigations 2020/2021

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| Complainant                | Respondent   |
|----------------------------|--|
| Jabulani Cossa             | Ceprotech (Pty) Ltd  |
| Keziah Fisher              | <b>Hatch (Pty) Ltd</b>                                     |
| B-BBEE Commission          | <b>Marisimo BEE Professional Verification and Services</b> |
| Andries Masilela           | KMA Workforce (Pty) Ltd                                    |
| Roy Potelwa                | Ixia Trading 74 T/A Total Idutywa                          |
| B-BBEE Commission          | Masiwilange Corridor Construction CC                       |
| B-BBEE Commission          | Comperio Group of Companies (Pty) Ltd                      |
| Kenneth Leonardo Diedricks | <b>Safcrete Construction (Pty) Ltd</b>                     |
| Lucas Mankge               | AGWJ (Pty) Ltd and Another                                 |
| Simphiwe Alert Simelane    | Josafa Mining Construction CC                              |

| Complainant                            | Respondent                                       |
|--|--|
| Debbie Wintermeyer                     | SVA International (Pty) Ltd                      |
| Bhekizenzo Promise Masinga             | Stefanutti Stocks (Pty) Ltd                      |
| Daphne Mashile-Nkosi                   | Cell C Ltd and Others                            |
| Mandlenkosi Aaron Vilane and 4 others  | Rula Bulk Material Handling (Pty) Ltd            |
| Sipho Leslie Mahlangu                  | <b>Sand Shifters Africa Pty (Ltd) and others</b> |
| Sebongile Josephina Msimanga Almoguera | Acrow Limited and Others                         |
| Sarah Mabu Mahlaule                    | Advidata Trading 70 CC                           |
| Armstrong Sthembiso Ngcobo             | Tiestanetix (Pty) Ltd t/a My Glass               |
| Yugesh Pillay                          | Botes & Kennedy Manyano (Pty) Ltd                |

- Other cases on the list have adverse findings while no evidence of wrongdoing was found in others
- Entities marked in bold are in the process of reviewing Commission's decision in courts, and are being defended

# Legislative Gaps

30

## ***Strengthen Legislative and institutional framework***

- Over criminalized – cases to be referred to SAPS /NPA – lengthy and no remedy for prejudiced parties
- No administrative provisions to make fronting practices & misrepresentation a prohibited practice e.g. Competition Act , Companies Act, National Credit Act – need this in addition to criminal offences to be effective
- No provisions empowering the B-BBEE Commission to search for evidence or conduct raids to assist investigation process.
- Close loopholes for abuse of enhanced recognition, modified flow through, etc. and provide powers to issue compliance notices to curb unacceptable conduct

## ***Provide for a dedicated or special Tribunal for B-BBEE matters***

- All matters are handled on normal courts which then become detrimental to black people who have been victims of fronting.
- Proposal to amend the Act to have provision for referral to Companies Tribunal for quick adjudication.

## ***No consequences for non-compliance by organs of state and private sector***

- There is no express consequence for non-compliance with s10 and s13G such as fines or imprisonment.

# Conclusion & Way Forward

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- ❑ *Challenges* remain as there is no budget for compensation of employees, no adequate office space & human resources, all of which are due to the failure to list the B-BBEE Commission as a public entity under the PFMA, and these largely affect wellbeing of staff.
- ❑ Year under review was affected by COVID-19 pandemic restrictions which resulted in *remote operation*, with systems not ready, thus affecting delivery timelines. Employees of the entity have demonstrated *commitment beyond the call of duty* and performed their best to achieve above 80% performance.
- ❑ With increased concerns on *Owner-Driver Schemes*, the B-BBEE Commission will hold a formal hearing prior to finalizing the investigations on this matters for a more systemic approach to the concerns raised. Focus will also be on worker or employee schemes given the abuses identified in cases such as the G4S Secure Solutions (SA) (Pty) Ltd.
- ❑ A *panel of investigating service providers* has since been appointed as a mitigation measure, which will offer additional capacity to expedite cases referred for investigation.
- ❑ The impact of B-BBEE is evident from increased contributions towards B-BBEE targets and in the case of fronting practices redress to prejudiced parties and prosecution pursued for blatant criminality are critical indicators.
- ❑ B-BBEE Act should be amended to give more administrative powers to issue compliance notices, block non-compliant transactions and create a dedicated Tribunal or court for prosecution of prohibited practices for effective consequence management, in addition to the current criminal process that is not fully effective.



**POWER 98.7** @Pow... 20 Oct 20  
[ON AIR]: Molpene Kgaboesele, Executive Manager of Investigations & Enforcement at the **B-BBEE Commission** joins @tumisangndlovu now to unpack the Fronting and Misrepresentation of B-BBEE Status Cases.

#POWERBusiness

**BL BusinessDay**

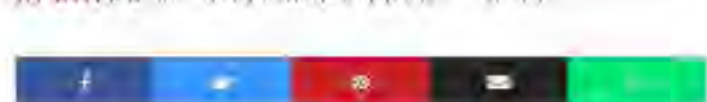
  
**Carol Paton** Editor at large

**NATIONAL**

### Tenders can still be pre-qualified, B-BBEE Commission says

Criteria for government tenders can still be set by the minister of trade & industry, even though the court struck down the Treasury regulation that enables this, the commission says

**BL PREMIUM**  
04 NOVEMBER 2020 12:16 AM (GMT+2) (SUNDAY)  
UPDATED 04 NOVEMBER 2020 12:53



 @SAGovNews @SA... · 04 Nov 20

[Read] The **B-BBEE Commission** has noted the ruling by the Supreme Court of Appeal that declared the PPPFA Regulations of 2017 invalid and confirms that the ruling has no effect on the B-BBEE Act, as amended, and its requirements [tinyurl.com/y482z2kz](https://tinyurl.com/y482z2kz)

**CREAMER MEDIA'S ENGINEERING NEWS**

## Gauteng High Court dismisses application to set aside BBEE Commission's investigative report

7th July 2021 BY: SIMONE LIEDTKE

**T**he Broad-Based Economic Empowerment (BBBEE) Commission has welcomed the decision by the Gauteng High Court to dismiss, with costs, the application by CRRC E Loco Supply to set aside a decision of the commission and interdict the publishing and

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 Bongani Bingwa @bongibez

B-BBEE fronting reportedly rife as companies misrepresent their transformation credentials. Some submit fraudulent certificates or co-opt unsuspecting employees to get tenders or deals. B-BBEE Commission investigating more than 400 cases.

#702Breakfast

### Fronting rife in SA, says B-BBEE Commission

By Siphelele Dlodla 9 Oct 21, 2020

SHARE THIS ARTICLE:

JOHANNESBURG - Fronting and the misrepresentation of black economic empowerment (BEE) status by companies in various sectors remains rife in South Africa, according to the B-BBEE Commission.

The commission said yesterday that it was investigating more than 400 cases of fronting.

← Tweet

 Department of Employment and Labour

Join the B-BBEE Commission and the Commission for Employment Equity for the Management Control and the status of women in transformation webinar today at 10:00-12:00. Media organisations wishing to join the webinar can register on: [us02web.zoom.us/join/8121212121](https://us02web.zoom.us/join/8121212121)

**Invitation 2020**  
Management Control and the Status of Women in Transformation.



**Radio 2000** @Radio2000 - 21 Sep 21  
#SoundBiteOfTheDay

The **B-BBEE Commission** has warned private & public sectors to refrain from including foreign nationals as beneficiaries of B-BBEE.

This after a Nigerian-born man misrepresented his co's BEE credentials to benefit from govt tenders.

#TheGlenzitoSuperDrive





**Thank You!**

**“An Inclusive economy for all, together”**