

# BBBEE Commission plans to stamp out fronting

By [Soria Hay](#)

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The Broad-based Black Economic Empowerment (BBBEE) Commission made it clear on its launch roadshow last year that there will be a particular emphasis on ensuring that the ownership element is being adequately and sustainably addressed.



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At its core, the objective is to change ownership patterns within the South African economy, with a targeted minimum of 25.1% ownership – although there are specific sectors and industries where this requirement is actually higher.

However, the true participation of black people in the South African economy cannot be increased as long as entities are allowed to engage in fronting practices. The commission stressed that it would clamp down on undesirable practices which affect ownership, but also on practices which could impact the other elements of the BBBEE Scorecard, with associated penalties and implications for non-compliance.

## What is fronting?

Fronting is defined in the amendment Bill to the Broad-Based Black Economic Empowerment Act as “a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of this Act or the implementation of any of the provisions of this Act, including but not limited to practices in connection with a BBBEE initiative.”

## Indicators of fronting in ownership transactions

- **Window-dressing:**

This includes cases in which black people are appointed or introduced to an enterprise on the basis of tokenism and may be discouraged or inhibited from substantially participating in the core activities of an enterprise, and discouraged or inhibited from substantially participating in the stated areas and/or levels of their participation.

- **Benefit diversion:**

This includes initiatives implemented where the economic benefits received as a result of the BBBEE status of an

enterprise do not flow to black people in the ratio as specified in the relevant legal documentation.

- **Opportunistic intermediaries:**

This includes enterprises that have concluded agreements with other enterprises with a view to leveraging the opportunistic intermediary's favourable BBBEE status in circumstances where the agreement involves significant limitations or restrictions upon the identity of the opportunistic intermediary's suppliers, service providers, clients or customers; the maintenance of their business operations in a context reasonably considered improbable having regard to resources; and terms and conditions that are not negotiated at arms-length on a fair and reasonable basis.

In the context of the ownership element, fronting is in essence the misrepresentation of the contributions of the benefits made by the measured entity to a black individual in prohibiting or limiting their right to exercise control over the resources of the company in which they may own shares and have access to voting rights. This could also be hindrances in allowing them to enjoy their share in the fruits of investments or participation in the company.

## **Fronting is now a criminal offence**

In investigating fronting practices, the commission is empowered to:

- issue summonses, subpoenas and interrogate witnesses and alleged offenders; and
- institute court proceedings to restrain any breach of the BEE Act, including a fronting practice or to obtain appropriate remedial relief.

The commission is of the view that any matter that it has investigated may involve the commission of a criminal offence in terms of the BBBEE Act or any other law, it must refer the matter to the National Prosecuting Authority or the appropriate division of the South African Police Service.

The Amendment Act provides that any person who knowingly engages in a fronting practice commits an offence. The Amendment Act criminalises fronting and other misrepresentations regarding the BBBEE status of an enterprise. Any person convicted of an offence in terms of the BBBEE Act may be liable to a fine or a maximum prison sentence of 10 years, or in the case of a juristic person, a fine of up to 10% of its annual turnover.

Further, any person convicted of an offence in terms of the BBBEE Act may not for a period of 10 years from the date of conviction, contract or transact any business with any organ of state or public entity and will be registered in a register of tender defaulters with the National Treasury.

The Amendment Act therefore not only criminalised fronting, which was not the position previously, but it created an offence for individuals who do not take proactive steps to ensure that fronting is not taking place in any ventures in which he or she may be involved.

## ABOUT THE AUTHOR

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