

LAW MATTERS

COMPLAINTS OF
FRONTING

SPONSORED COLUMN

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EMPOWERMENT ratings are increasingly important for obtaining government contracts, licences and permits as well as doing work for any other business remotely reliant on government.

Incentives for high empowerment scores combined with a great quantity of nuanced and difficult-to-interpret scoring criteria have created fertile ground for creative company structures and contractual arrangements, the legality of which can be open to interpretation.

To address many challenges relating to the implementation of the empowerment campaign, the commission was formed under the BBBEE Act and started operating in April 2016.

The commission has a broad mandate which includes processing and investigating complaints and maintaining a registry of “major BBBEE transactions” valued over a prescribed threshold.

In its first year of operation the commission received about 180 complaints relating to non-compliance with the BBBEE Act in some form or another. This represents close to four complaints a week.

In its latest annual performance plan, the commission identifies fronting as the subject matter of over 80% of the complaints received. This suggests close to three complaints a week are made to the commission relating to fronting.

Parties involved in BEE transactions including shareholders, directors and financiers should be alive to the possibility that company structures they participate in could be the subject of intense scrutiny by the commission following the compulsory filing of a major BBBEE transaction or the lodging of a complaint.

It must be appreciated that fronting is a serious crime under the BBBEE Act that comes with the potential of up to 10 years in prison and/or a fine of up to 10% of annual turnover. It is accordingly an important concept to understand, particularly when structuring one’s affairs in the context of an empowerment transaction.

Watson is a partner at Cox Yeats Attorneys practising in the corporate and natural resources law team. With a background in corporate and tax law, Watson advises on a wide range of commercial matters relevant to KwaZulu-Natal industries, including chemical manufacturing, transportation, sugar, animal feed and commercial property. He has authored significant publications for LexisNexis, including a Practical Guide to Mergers and Acquisitions in South Africa and a Practical Guide to Trusts. He can be contacted on 031 5368500 or email swatson@coxyeats.co.za

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