



## GLOBAL BUSINESS SOLUTIONS

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Edition 6/2016

### SOME BEE CONDITIONS, UPON CONDITIONS

#### **THE NATIONAL CREDIT ACT AND REGULATIONS (UNDER GOVERNMENT GAZETTE GN512 GG39981/11 MAY 2016)**

If it is required of a company to register with the National Credit Regulator (NCR), the said registration will be made subject to you furnishing the NCR with your commitment in terms of the Broad-Based Black Economic Empowerment Act.

The NCR may apply variations to this provision depending on the nature of the credit providing business.

#### **THE IMPACT OF BEE ON LICENCES AND CONCESSIONS**

The draft BEE regulations that have been published for comment in the Government Gazette on the 17th of February 2016 states that “in order for the company to qualify for a licence, concession or other authorisation the company or organ of state must state the use of the BEE recognition levels 1 to 8 as set out in the BEE Codes of Good Practice.”

More favourable consideration will be given to 51% black owned or black women-owned companies as well as ownership by broad-based designated groups.”

#### **ADPP OR AUTOMOTIVE INVESTMENT SCHEMES WILL BE CONDITIONAL UPON YOUR BEE RATING**

The Government have under the new BEE Codes highlighted that all automotive companies will only receive state support if they meet the required black empowerment standards.

According to Minister Rob Davies, “In the new BEE Code there will be a requirement that all automotive companies that are going to receive benefits from government under the ADPP or automotive investment scheme are going to have to be recognised somewhere on the BEE score card and in terms of the architecture of the new Code that will mean that they will have to be involved in enterprise and supply development.”

This effectively means that Companies will have to encourage the involvement of BEE internally and within the supply chain development of their Companies.





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### 10% FINE OF YOUR ANNUAL TURNOVER DUE TO FRONTING

Recently the Acting B-BBEE Commissioner Zodwa Ntuli told journalists that should a company be found guilty of fronting it could face a fine of 10% of its yearly turnover. She also mentioned that Shareholders would also be liable to a fine in their private capacities and could also serve a jail sentence of up to ten years. She also stated that out of the 33 complaints they had received, 22 of them were purely based on fronting.

Let us briefly unpack what fronting means:

“Fronting practice” means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the BEE Act or the implementation of any of the provisions of the BEE Act, including but not limited to the practices in connection with a B-BBEE initiative-

- a) in terms of which black persons who are appointed to a company are discouraged or inhibited from substantially participating in the core activities of that company;
- b) in terms of which the economic benefits received as a result of the broad-based black economic empowerment status of a company do not flow to black people in the ration specified in the relevant legal documentation;
- c) involving the conclusion of a legal relationship with a black person for the purpose of that company achieving a certain level of broad-based black economic empowerment compliance without grating that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person; or
- d) involving the conclusion of an agreement with another company in order to achieve or enhance Broad-based black economic empowerment status in circumstances in which-
  - i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;
  - ii) the maintenance of business operations is reasonably considered to be improbable having to the resources available;
  - iii) the terms and conditions were not negotiated at arm’s length and on a fair and reasonable basis.

Regards

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10 June 2016

