

## FRONTING PRESENTATION

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# DEFINITIONS..



- **‘Knowing’, ‘knowingly’, or ‘knows’- when used with respect to a person, and in relation to a particular**
- **matter, means that the person either:**
  - had actual knowledge of that matter; or**
  - was in a position in which the person reasonably ought to have had actual knowledge or investigated the matter or taken other measures that would provide the person with actual knowledge of the matter**

# DEFINITIONS



- **‘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 BBBEE Act or the implementation of any of the provisions of this Act.**

# OFFENCES AND PENALTIES



- A person commits an offence if that person knowingly--
- Misrepresents the BBBEE status of an enterprise
- Provides false information or misrepresents information to a BBBEE verification professional in order to secure a particular BBBEE status or benefit associated with this Act

# OFFENCES AND PENALTIES



- Provides false information or misrepresents information relevant to assessing the BBBEE status of an enterprise to any organ of state or public entity
- Engages in fronting practice
- A BBBEE Verification professional or procurement officer or any other official of a state organ or public entity failing to report fronting practices will be guilty of an offence

# OFFENCES AND PENALTIES



- Any person convicted of an offence in terms of this Act is liable to a minimum penalty of 10 years imprisonment or a fine or to both.
- If the offender is not a natural person, a fine of 10% of its annual turnover

# OFFENCES, PENALTIES AND PROHIBITIONS



- Any person convicted of an offence in terms of this 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
- Must be entered into the register of tender defaulters maintained by National Treasury
- Where the convicted person is not a natural person, the court may restrict the order to only those members, directors, shareholders who contravened this Act's provisions

# PRACTICAL EXAMPLES



- Shares sold to black shareholders but no valuation of business
- No dividends declared/ economic interest never realised
- Black shareholders payment not inline with white shareholders
- Black shareholders not participating in decision making
- Black employees being shareholders but not aware of this
- Employees Trust/ no decision making



# PRACTICAL EXAMPLES



- **Registering a new/shell company and selling shares of a company without assets**
- **Tendering company (BBBEE compliant) subcontracting 100% to non-compliant company and not declaring- No dividends for black shareholders**
- **Black employees sold shares in holding foreign company which is listed/ no representation at board/executive level**
- **Employees- Clauses in agreements requesting return of shares when no longer employed by that company**
- **Shares transfer forms not signed and not lodged with SARS**

# PRACTICAL EXAMPLES



- VA issued BBEE Certificate misrepresenting BBEE information, reported to SANAS- VA removed
- BBEE Auditor reported to IRBA, after site visit to verify information as per the certificate - matter under investigation

**THANK YOU!!!!!!!**

