



B-BBEE
COMMISSION

Overview of the Act and the Role of the B-BBEE Commission

2016



Presenter

Ms. Zodwa Ntuli

Acting Commissioner: B-BBEE Commission

An inclusive industrialised economy that is globally competitive

Purpose

To provide the overview of the Act and the role of the

B-BBEE Commission

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Vision

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Values

An inclusive economy is our first consideration

Open access and availability to all economic citizens

Impartiality

Consistency

Accountability for all decisions and actions taken by us

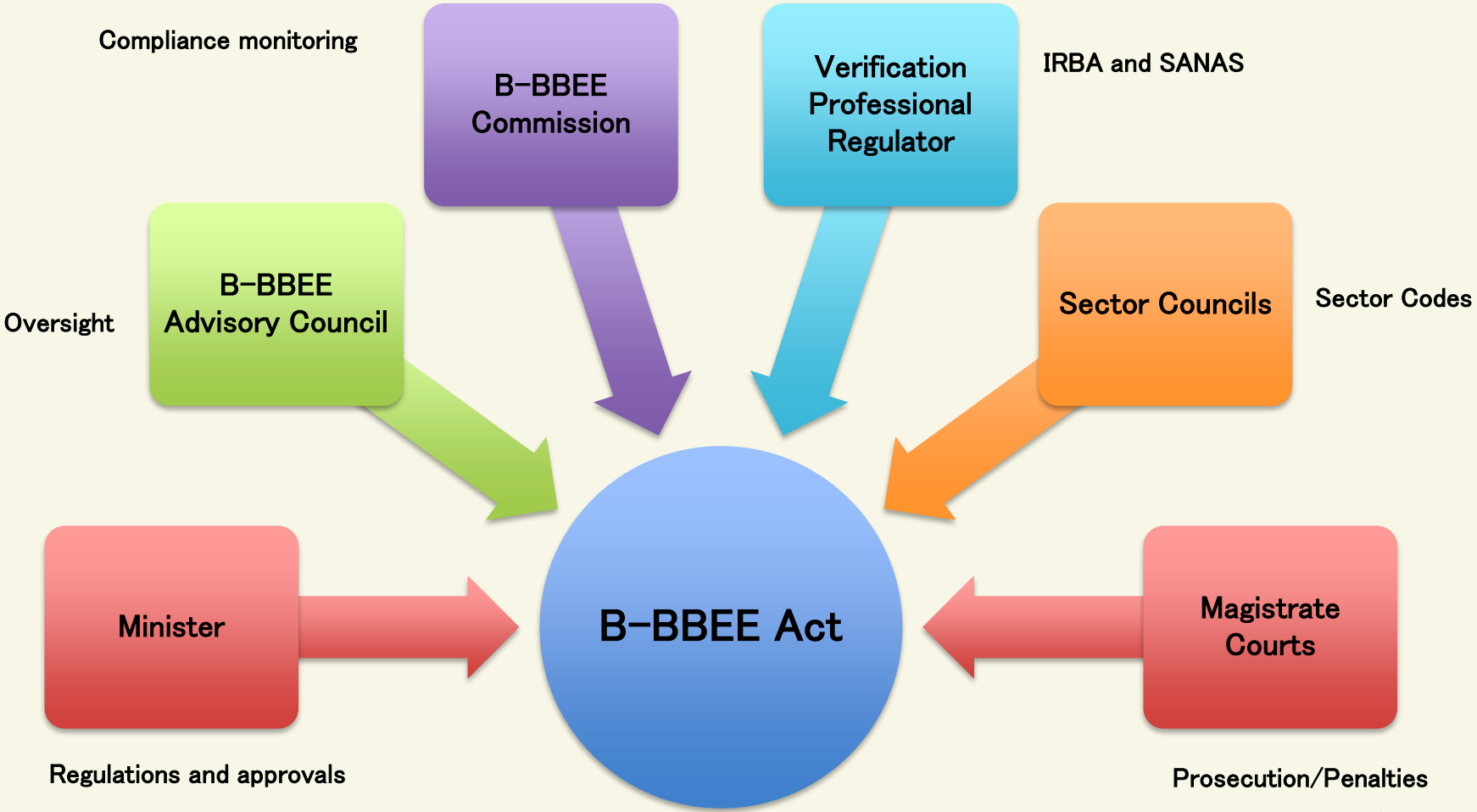
Zero tolerance to corruption

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Background

- B-BBEE Amendment Act 46 of 2013 came into effect on ***24 October 2014***
- Codes of Good Practice came into effect on ***1 May 2015***
- *Trumping Provision* in section 3(2) came into effect on ***24 October 2015***
- Regulations published for implementation on ***6 June 2016***
- Stakeholder Engagements by the B-BBEE Commission were in ***September 2015*** to ***March 2016***
- Stakeholder Conference on Fronting on ***29 March 2016***
- Provincial Roll-out commences ***in August 2016***
- Threshold on Major B-BBEE Transactions to be issued by the Minister soon

Institutional Framework



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Mandate in terms of the Act

- Section 13F outlines the following functions
 - Oversee, supervise and promote *adherence* in the *public interest*
 - Strengthen *collaboration between public and private sector* to promote and safeguard the objectives of the Act
 - *Receive complaints* and/or *investigate complaints* in terms of this Act
 - Promote *advocacy, access to opportunities* and *educational programmes and initiatives*
 - Maintain a *register* of major B-BBEE transactions (*above threshold*)
 - Receive and analyse prescribed *reports on compliance*
 - Promote *good corporate governance* and *accountability* by creating an *effective and efficient environment*
 - Increase *knowledge* and *public awareness* through educating, guiding, declaratory orders, and researching

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Role of Sector Codes

- *Economic* and *industry dynamics* have been taken into account with sectors allowed to develop sector codes
- Entities in sectors where there is a sector code *are not allowed* to be measured on the generic codes
- *Alignment of sector codes* to the Act is critical to prevent fragmentation and confusion
- Generic codes set *bare minimum*, with sector codes expected to enhance or accelerate the level of empowerment
- *Valid Sector Codes* – Tourism, Marketing and Communication, AgriBEE, Forestry, Property, Transport, Financial, Information and Communication Technology
- *Construction* and *Chartered Accountancy* sector charters *repealed*

Legislative Alignment & Reporting

Introduced the trumping provision to create legislative certainty

- Trumping provision section 3(2) effective on 24 October 2015
- B-BBEE Act will prevail in instances of conflict with *any other law* on a matter dealt with in B-BBEE Act

Specifying requirements for Monitoring, Evaluation and Reporting

- Sector codes clarified, including reporting to *sector councils* (s9)
- *Organs of state* and *public entities* reporting in *annual reports* (13G)
- *Listed entities* and *SETAs* reporting to the B-BBEE Commission (13G)
- *Registration* of major B-BBEE transactions (13F) above threshold

Minister's Powers & Transparency

Clarifying the Minister's Powers in respect of Codes and Regulations

- S9 – power to approve or repeal sector codes
- S10 – clarifies status of codes (generic and sector codes)
- S14 – power regarding regulations, guidelines, practice notes

Transparent process for organs of state/public entities to set higher criteria

- S9 (6) – permission to *exceed* the qualification criteria for procurement and other economic activities
- S10 (2) – allows for *exemption* from complying with the codes or *deviation* from the codes – on *objectively verifiable* facts or circumstances
- *Equity Equivalent* Investment Program can be pursued by multi-nationals who meet the requirements

Monitoring Adherence

Act creates the B-BBEE Commission in terms of section 13B

Introducing prohibitions, offences and penalties

- 13N normal offences about *confidential information* and *obstructing the administration*
- 13O prohibits *fronting*, *misrepresentation* of status, providing *false information* to verification agents, verification agent *failing to report* contravention
- **Penalties** – natural person can be a fine or up to 10 years imprisonment – up to 10% annual turnover for juristic person – **Magistrate Court** has jurisdiction
- **Cancellation of contract** or award in terms of 13A on account of false information
- **Exclusion** from doing business with the state (13P) for up to 10 years – could be limited to the directors, members or shareholders – registered on **tender defaulters register** of National Treasury

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Programmes

- The work of the B-BBEE Commission is organised according to the following programmes
 - Compliance
 - Investigations and Enforcement
 - Research, Analysis and Reporting
 - Relationship building/Stakeholder Relations
 - Administration

Services

- Stakeholders can engage the B-BBEE Commission on the following:
 - Lodging a Complaint (*Up to 1 year to investigate*)
 - Requesting an Advisory Opinion or Written Clarification (*30 days AO and 5 days CL*)
 - Requesting a Meeting, Presentation, Workshop or Information Session
 - Referral for Alternative Dispute Resolution
 - General Telephone Enquiries
 - Filing a Reporting (*within 90 days of FY or 30 days of approval*)
 - Register a major B-BBEE transaction (*within 15 days*)
- Filing a report will be at specified intervals and registering a major B-BBEE transaction will be after the threshold publication

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Conclusion

- Communities and businesses are critical in:
 - Assisting entities to achieve **compliance** with the Act, regulations and codes
 - Obtaining clarification and/or advisory services before concluding deals
 - Review existing contracts and be vigilant
 - **Identify and report** misrepresentation, fraud, fronting practices and any violation of the Act to the B-BBEE Commission, and other law enforcement agencies

Contact Details

**B-BBEE Commission
the dti Campus
First Floor, Block B
77 Meintjies Street
Sunnyside
0001**

Telephone: +27 12 394 1535

Fax: +27 12 394 2535

Email: RamareM@beecommission.gov.za