



B-BBEE

COMMISSION

**Presentation Guide for
Business Leadership SA
Engagement**

29 May 2019



Meaning of B-BBEE

“broad-based black economic empowerment” means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:

increasing the number of black people that manage, own and control enterprises and productive assets;	Skills Development, Management Control and Ownership
facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;	Skills Development, Management Control and Ownership
human resource and skills development	Skills Development
achieving equitable representation in all occupational categories and levels in the workforce;	Management Control and Skills Development
preferential procurement from enterprises that are owned or managed by black people; and	Enterprise and Supplier Development
investment in enterprises that are owned or managed by black people	Enterprise and Supplier Development

Ownership Test under B-BBEE

- **Exercisable voting rights**

- A voting right of a **participant** that is not subject to **any restriction**
- **Participant** refers to a **natural person holding rights of ownership**

- **Economic interest**

- A claim representing a **return on ownership** similar in nature to a **dividend right**

- **Net Value Realisation**

- considers aspects such as **loan repayments** and ultimate vesting of ownership in the hands of black people

Statement 102 – Sale of Asset

- The **creation of sustainable businesses or business opportunities** in the hands of black people and the **transfer of critical and specialised skills, managerial skills and productive capacity** to black people
- A sale of asset, equity instrument and business **must involve a separately identifiable related business with no unreasonable limitations or conditions** with regard to its clients or customers, and demonstrate that it has its own clients, customers or suppliers other than the seller
- Any operational **outsourcing** arrangement between the seller and the associate enterprise **must be negotiated at arms-length on a fair and reasonable basis**
- The transaction should be subjected to an **independent verification value** by an independent expert
- **No qualifying transaction could be claimed** as B-BBEE ownership **if a repurchase transaction is entered into within a 3-year period** after transaction implementation
- Where a Seller has claimed benefits under its ownership scorecard, it **may not claim benefits under the enterprise and supplier development element** as this would be deemed as double-dipping

BBOS, ESOP & TRUST

Ownership facilitated through these vehicles are tested on the Rules entailed in the Codes of Good Practice Statement 100 Annexes 100 (B) to (D)

**Broad Based
Ownership Scheme
Annexe 100 (B)**

Not more than 15% management fees and 85% of benefits must accrue to black people
Record of names of Participants or defined class and fixed % of claim or formula
50% of fiduciaries and Chairperson must be independent, 50% black and 25% black women

**Employee Ownership
Scheme
Annexe 100 (C)**

Participants participate in appointing 50% of fiduciaries and in managing the scheme at a level similar to that of a shareholder
Record of names of Participants or defined class and fixed % of claim or formula
Constitution and other documents must be available to participants on request

**Trust
Annexe 100 (D)**

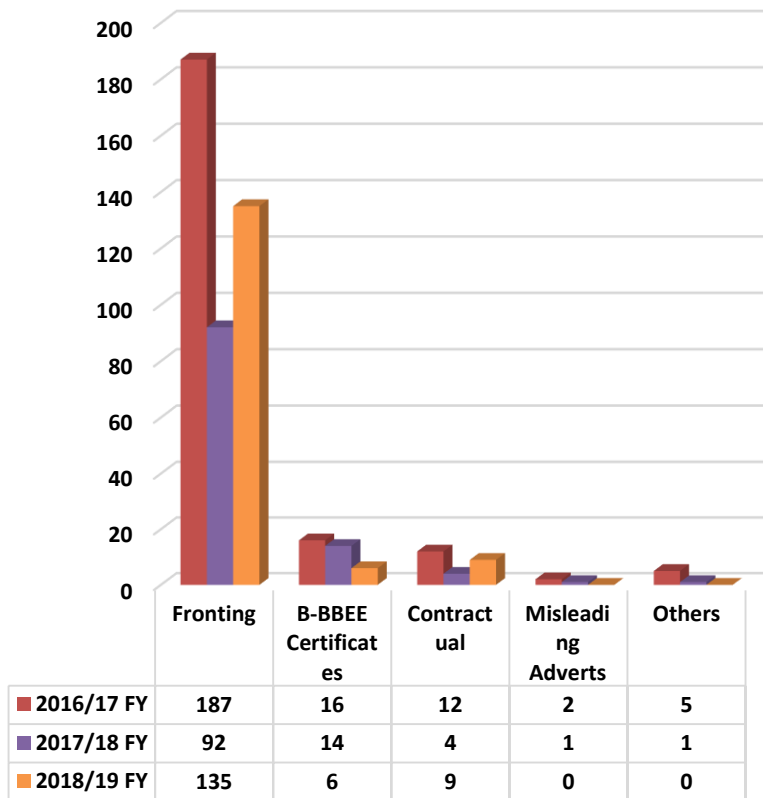
Trust deed to define beneficiaries and proportion of entitlement – record of names or defined class and record of fixed % or formula
Trustees have no discretion

Family Trust

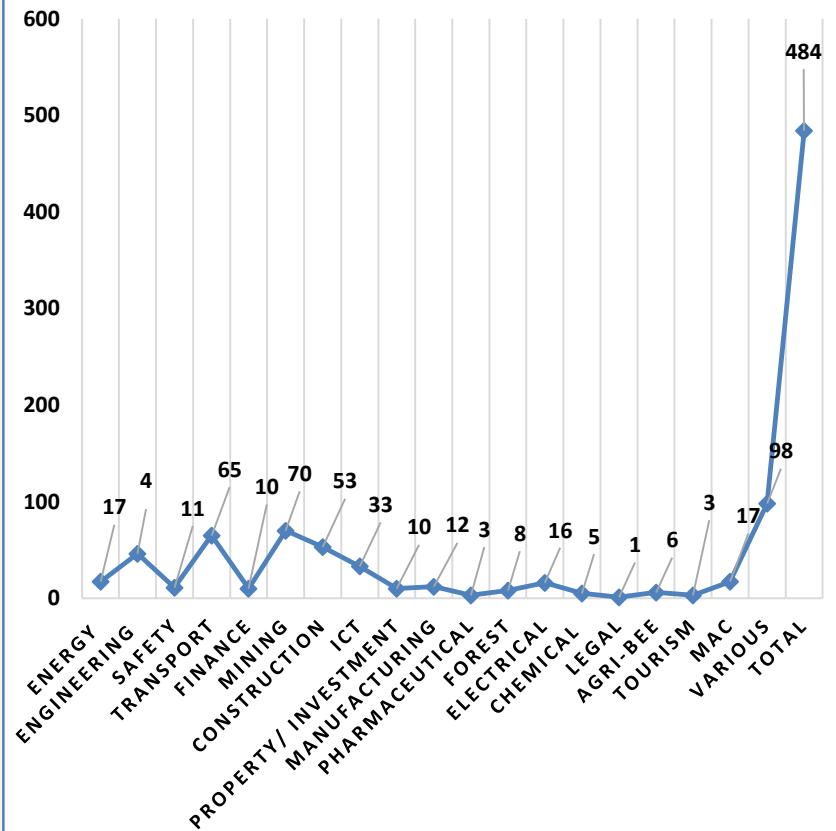
Trustees can have discretion

Complaints Trends

Type of Complaints:
Jun. 2016 - 31 Dec. 2018



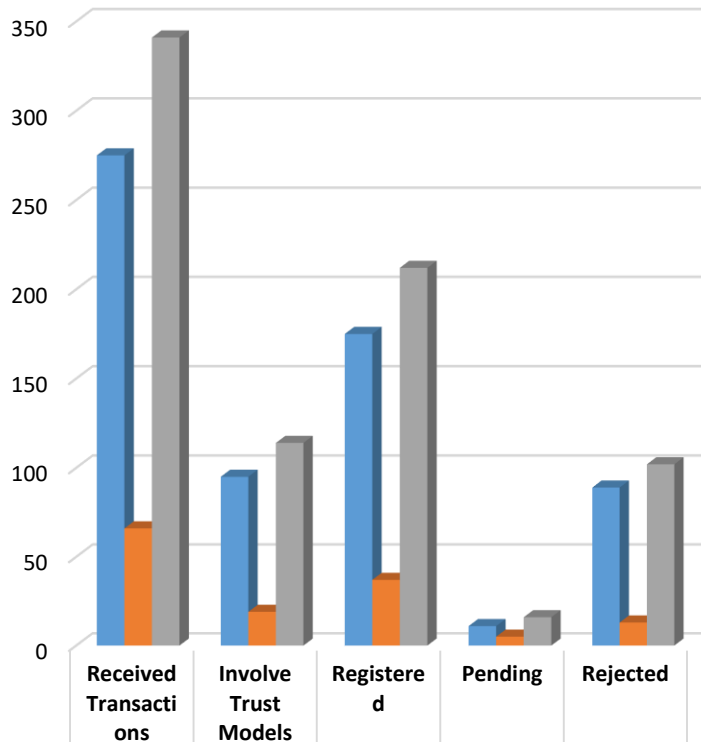
TOTAL COMPLAINTS PER SECTOR:
JUN. 2016 - DEC. 2018



Source: B-BBEE Commission

Major B-BBEE Transactions

Major B-BBEE Transactions Received



	Received Transactions	Involve Trust Models	Registered	Pending	Rejected
■ 2017/18 FY	275	95	175	11	89
■ 2018/19 FY (April - 31 December)	66	19	37	5	13
■ Total	341	114	212	16	102

- R25 million transaction value threshold
- 30% rejection rate for non-compliance with basic requirements
- 33% involve ownership through trust models with potential to benefit workers, communities and other collective schemes
- Feedback on transactions being given to entities, some have remedied concerns

Observations from major transactions

- No basic founding documents for the transaction, such as financing agreements (where there is a loan), share sale agreement, shareholders' agreement, etc.
- No exercisable voting rights for black majority shareholders
- Non-negotiable tag-along, come-along, call options and trigger provisions and one-sided restraint of trade or non-compete clauses; cession of shares on acquisition
- No economic benefits flowing during the transaction
- No net value realisation/no vesting of ownership rights - time graduation factor not applied as black shareholders usually pay off loans with all their dividends and do not receive any economic interest

Observations from major transactions

- Non-black minority shareholders appointing more directors to the board than the black majority shareholder
- Black shareholders unknown or unidentifiable from the structure
 - Most entities unable to provide black ownership breakdown showing that they either don't know or have a record of their individual black shareholders
- Black ownership percentage is not commensurate with management control exercised with black shareholders not participating in nominating board directors
- Restrictions placed on voting rights, including increasing required % for simple majority for the black shareholders to always require non-black shareholders for simple decisions required

Observations from major transactions

In respect of Trusts, the following observations were made:

- Charitable Trust, Foundation Trusts, Skills Development Trusts
- Investment vehicle and/or to support black businesses
- Unidentifiable and/or unknown black shareholders or beneficiaries
- Proportion of entitlement or claim percentage unknown
- Founder has control over activities and decisions of the Trust
- Loss of shareholding on resignation, retrenchment, dismissal, death
- No founding documents, Trust Deed or Constitution for BBOs or CBOs
- PBOs, NPCs used for ownership - specialised scorecard – no ownership
- Winding-up or termination process not provided for
- Minors and unborn children recognised as participants
- Most trusts don't have competent person's report for compliance

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