

‘Substance’ vs ‘Legal Form’

Join us at the launch of the **TFM Mail & Guardian B-BBEE Breakfast Club** on Friday, 2nd August 2019. The B-BBEE Breakfast is a platform designed for executives and their teams to highlight challenges in their B-BBEE compliance, investigate solutions and identify the opportunities available from a management perspective. The objective of this platform is for executives and their teams to network with their peers as well as gain insight into the shortfalls and milestones achieved by other organisations across all sectors.

B-BBEE Commissioner, **Ms Zodwa Ntuli**, and our panel of experts will investigate and share their views on the disparity between ‘Substance’ vs ‘Legal Form’ in the context of implementing B-BBEE compliance in the true spirit of transformation.

‘Substance’ vs ‘Legal Form’ has an impact on the Ownership, Management Control, Skills Development, Supplier Development and Enterprise Development elements of a B-BBEE Scorecard across all sectors. Three of these are identified as Priority Elements and are therefore critical to an organisation’s ultimate scorecard outcome.

While ‘Legal Form’ is central to the faithful representation and reliability of the evidence presented at the time of verification, it can fly in the face of real and meaningful transformation. Worse still is that real and meaningful transformation of “Substance” may not necessarily meet the ‘Legal Form’ requirements for measurement at verification.



The **TFM Mail & Guardian B-BBEE Breakfast Club** provides an open and interactive platform, whereby the Panel of Experts and Members will debate ‘Substance’ vs ‘Legal Form’ by highlighting the legal ‘red flags’ and their impact on ‘Substance’.

The B-BBEE Breakfast Club affords members:

- ✓ Networking opportunities with peers across all sectors;
- ✓ One-on-one interaction with an array of experts working daily in the field of B-BBEE, which in many cases will provide a broader perspective on specific challenging issues;
- ✓ Insight into the challenges facing organisations across all sectors;

The disparity between **‘Substance’ and ‘Legal Form’** more often than not reveals itself in the Ownership, Skills Development and Enterprise & Supplier Development elements of a scorecard.

- ✓ Examination of how organisations practically address the challenges in the Codes, the Regulations thereof and best practice to effectively drive transformation and stimulate the economy.

“... of the 341 ownership transactions submitted for registration between 9th June 2017 and December 2018, 33% involved broad-based structures in the form of Trusts, BBOS and ESOPs. When assessed against the ownership rules, the majority of these structures did not meet the rules set out in Statement 100 Annexes (B)-(D), and thus could not be recognised for ownership points” Zodwa Ntuli.

Ownership | The disconnect between real ‘Substance’ and legally compliant B-BBEE outcomes is examined, relating to active Ownership structures and Management Control. This disconnect has unfortunately resulted in many Fronting Practices emerging, especially in terms of Shareholders with no voting rights, Trusts and Employee Share Option Schemes

Skills Development | This portion of the debate examines instances of meaningful Skills Development at international standards that do not meet the “Legal Form’ for B-BBEE recognition. One of the consequences of this disconnect is that it often drives inappropriate Skills Development decisions and creates outcomes that do not support the spirit of transformation.

Keynote Speaker

Ms Zodwa Ntuli has been at the helm the B-BBEE Commission since its establishment in 2016. The B-BBEE Commission was established by Section 13B of the B-BBEE Act 46 of 2013. The mandate of the B-BBEE Commission is to impartially oversee, supervise and promote adherence to the Act without fear, favour or prejudice according the values and principles held in section 195 of the Constitution.

“... discretionary Trust that have socio-economic or skills development benefits for ‘Black’ People offering bursaries, building low-cost housing, funding local entrepreneurs, to name but a few, while that would benefit ‘Black’ People, such a Trust cannot be passed off as transferring ownership to ‘Black’ People. However, it can pass the test for Socio-Economic Development and Skills Development, both of which are empowerment imperative”. Zodwa Ntuli.

Enterprise Development & Supplier Development | Vital to the desired socio-economic outcome of B-BBEE is developing small businesses. However, legally compliant Enterprise Development or Supplier Development interventions are often approached in a manner that leaves Beneficiaries worse off following the intervention. An example of this is that B-BBEE “Legal Form” allows for a one-year interest-free loan; however, what is the real ‘Substance’ of this intervention?



DATE	Friday, 2 nd August 2019
TIME	08:30 to 11H30
COST	R1,350.00 excluding VAT
VENUE	Emperor's Palace Johannesburg



TRANSFORMATION IS MORE THAN SIMPLY BLACK & WHITE

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