

# Facts, fakes and the consequences of fronting

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In an ideal world, a gentleman's handshake would be all you need to conclude a business transaction. However, the reality is that our world is far from ideal - to the contrary, the boundaries around ethics are becoming increasingly blurred, and it's not unusual for people to work situations to their own advantage. Your best defence in such a milieu is a solid legal foundation - and lots of preparation.



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Picture this scenario: You're getting married. You're full of excitement and enthusiasm. You've been ring shopping, checked out venues, tasted cake. Into this romantic idyll creeps a less-than-flowery proposition: the need to spend time with a lawyer, drawing up an antenuptial contract.

No, it's not pleasant. No one wants to think that a relationship needs anything more than a promise to proceed. We all want to believe in values like trust, faith and reliability. But the truth is that we can't – not even with the people we choose as our life partners. Why, then, would you treat a partner in a business transaction any differently?

This truth was recently brought home to me when I heard of a matter involving alleged fronting during a BEE transaction. Far from having a valid BEE shareholder, the business owner in question had not received payment for his BEE partner's shares – a significant oversight, given that he had signed over 51% of his company. He decided to look the other way and ignore the non-payment, because the company stood to benefit from its enhanced BEE status. In reality, the transformation had become a true example of transformation's murkier side: instead of contributing to the true and meaningful advancement of people of colour, which we all agree is critical, there was advancement of personal gain.



The implications were, of course, far reaching. The client may have been making money, but his own customers, who were seeking to partner with a BEE entity, were being duped. That's before we even consider the real loss here, which involves people who stood to benefit from a real BEE deal – and, of course, the fact that such transactions inevitably come to suffer from a maligned reputation.

Fallout from a situation like this cannot be avoided. When you partner with a company that you believe has a Level 1 BEE supplier status, you're going to be understandably furious when you find out that you're not receiving what you've been promised – and you'd be perfectly within your rights to take legal action. In fact, South African law states that parties that have been proven guilty of fronting are required to pay a penalty which involves disgorging 10% of the earnings resulting from the contract.

For many companies, that amount is enough to make it necessary to close doors. And even if that doesn't sound like the final death knell, the fact that you will be placed on a tender blacklist, prohibiting you from taking on government for the next 10 years, surely will. Not forgetting the potential jail time!

All told, consequences are serious. But so, too, are the monetary rewards that stand to be made when you strike the right deal. So how do you make sure that all parties are kept happy; that you keep your integrity, and remain on the right side of the law, while also gearing up to take advantage of potentially lucrative tenders?

The answer is simple: lawyer up, as they say in the movies. Obtaining proper legal advice may appear to be a costly exercise, but it's nowhere near as expensive as footing the bill for the fallout when fronting is exposed.

To put this thinking in perspective, imagine just how much you stand to lose if deals go awry. Picture losing the business you have painstakingly built, simply because you didn't want to take on the expense of making sure that the deal was structured in a way that made it watertight; and that protected the business as well as all parties involved. This is precisely what happened to the client in question. He had remained silent when his so-called equity partner didn't come forth with the funds promised in return for his 51% share, but it suited the owner, because he was receiving more business thanks to his enhanced BEE status. It stopped suiting him when the partner decided to step out of the shadows and stake his claim on the company, however.

As a lawyer, it's in my nature to say "show me the documentation". As with so many other things in life, what you save on legal fees in the short term might well be spent (a few times over) in the long-term – in other words, a false economy.

As for handshakes – they're great. They're a wonderful tradition, and are perfect when you're greeting people or congratulating someone for an exciting rugby match. In the real world, a binding contract is far more practical. It's going to save you money, and reputation – two things that are hard to get back.

## ABOUT THE AUTHOR

David Loxton is CEO of Africa Forensics & Cyber, specialists in fraud, online and white collar crime. He also practises for his own account at Loxton Attorneys, which focuses on employment law.