

STILL NO ROOM FOR BLACKS IN SOUTH AFRICA'S AUCTION INDUSTRY: Speech delivered by Tirhani Mabunda at the launch of the South African Professional Auctioneers (SAPAA) held at Tirhani House on Thursday the 25th of May 2017.

Program Director, Mr Yusuf Patel, the Deputy Chairperson of the Estate Agency Affairs Board (our guest speaker today); members of the South African Professional Auctioneers Association (SAPAA), members of the media present here, distinguished guests, L&G; it is an honour for me to address you at this important launch.

First and foremost, I would like to thank all of you for responding to our invitation and gracing SAPAA's launch with your attendance today here. Before I get into the gist of SAPAA's launch, allow me to read the verbatim opening lines of a speech I delivered more than 10 years ago on Tuesday the 27th of February 2007 at the Wanderers Country Club. ***“Thirteen years into the democratic South Africa, black-owned and genuinely black-empowered auction enterprises account for a combined total of less than 1% of the estimated R2 billion revenue generated annually by the auction industry in South Africa. This unfortunate situation is not coincidental as there is a deliberate exclusion and prejudicial avoidance of black-owned auction enterprises by the users of auctioneering services, both in the private and public sectors. The auction industry remains untransformed with little, if any evidence that genuine and meaningful transformation will ever happen. The fact that there are only a handful of black-owned auction companies coupled with the fact that only one or two of the major players in the auction industry have genuinely black-empowerment is an indictment to South Africa's new democratic dispensation”.***

I uttered these words at the occasion of the launch of the South African Auction Transformation Action Group (SAATAG), of which I was also Chairperson. Fast forward to today, the only words I need to change in the 2007 statement is that it is now twenty three years into the democratic South Africa. Other than that, the demographic status of the auction industry is exactly the same as it was 10 years ago. Maybe I could be modest and adjust the 1% to between 1.5 and 2%. In other words, all black-owned and genuinely black-empowered auction companies share a combined 30-40 million rand out of potentially more than R2 billion in fees earned by auctioneers in South Africa. L&G, this dire situation prompted me to entitle my speech today ***“Still no room for blacks in South Africa’s auction industry”***.

L&G, you have to believe members of SAPAA that it is not for lack of effort on our part that there has been no improvement on the fortunes of blacks involved in the auction industry. I am sure you are wondering what happened to SAATAG now that we are launching SAPAA. Well; for starters, although SAATAG’s objectives were noble, the fact that it was not an independent organization was problematic. SAATAG was established as a desk of the South African Institute of Auctioneers (SAIA). The fact that all the transformation programs initiated by SAATAG required SAIA’s approval explain why the initiative failed in the end. Such transformation initiatives included suggestions for the auction industry to introduce its own industry specific indicators of empowerment; scorecards and monitoring mechanisms.

There was no way SAIA would have supported SAATAG’s objectives because its official position was that transformation is a prerogative of individual companies, and there was no need for industry driven transformation. We never gave up after SAATAG’s mission failed. Our next strategy was to seek positions within SAIA’s executive and try to transform the industry from inside. Four of us served in SAIA’s executive at the height of this strategy, with me as SAIA’s Chairperson for four and half years between 2009 and 2013.

This strategy didn't work either because the leadership positions didn't change our minority status within SAIA. In short, we were outnumbered. As the saying goes, ***"The tail will never wag the dog"***. However, a lot of good came from our involvement in SAIA's leadership, the highlight of which was the production of a draft Auction Industry Code.

So, we are here today because we decided to form SAPAA in August 2014. Although SAPAA has been in existence for just over two years, we resolved to launch the association today in order to give it prominence. SAPAA's vision and mission is well articulated in the Preamble outlined in Part A, Section 1 of SAPAA's Constitution and I won't bore you with a verbatim recitation of the articles. Also, you can visit our website on www.sapaa.co.za to learn more about us. However, SAPAA's Purpose, Aims and Objectives contained in Part B, Section 5 of SAPAA's Constitution deserve full mention. Sub-section 1 states that the broad purpose of SAPAA is to establish a professional, ethical, equitable, accountable, credible and respectable auction industry. Sub-section 2 states that SAPAA's aims and objectives are to:-

1. promote and advance the business conditions affecting the auction industry and auctioneering profession;
2. professionalize the auction industry and auctioneering profession by; among other things, establishing minimum entry requirements into the auction profession, including educational qualifications, experiential requirements, occupational designations and continuous professional development;
3. build the institutional capacity of its members by providing business and career development opportunities; including educational and training programs;
4. transform the auction industry by; among other things, creating conditions conducive to the entry and participation of PDIs, and promoting the equitable distribution of auction work;

5. achieve a substantial change in the racial and gender composition of ownership, management and control structures as well as in the skilled and specialist positions of new and existing auction enterprises;
6. influence the enactment of legislation, regulations, policies and programs conducive for the advancement of its purpose, aims and objectives; including but not limited to the regulation of the auction industry and the promotion of preferential procurement;
7. represent and coordinate the several and joint interests of its members;
8. promote ethical conduct within the auction industry by ensuring adherence to a code of conduct and only permitting *'fit and proper'*, honest and competent individuals and companies to practice as auctioneers;
9. educate and inform the public about the advantages of auction selling and buying; and
10. provide platforms for networking opportunities among SAPAA members, with the broader auction industry in South Africa, with the international auction community and other relevant stakeholders through engagements such as seminars, conferences as well as inbound and outbound trade missions.

It is disconcerting that those of us involved in the auction industry have to struggle for so long and end up resorting to the desperate measures of seeking attention to get just, equitable and fair treatment. One would have expected that these attributes are enshrined in South Africa's Constitution. One would have expected that a majority black government would prioritize reparations to previously disadvantaged individuals. Recent developments across many segments of South African society demonstrate that the country's CODESA negotiated freedom seems to be unraveling, be it land restitution, socio-economic transformation, housing and education provisioning to mention but a few. It would seem that either the founding fathers of our democratic settlement were overzealous in the concessions they made; particularly with regard to socio-economic transformation, or our white counterparts are renegade.

Attempts by South Africa's ANC led democratic government to reverse the socio-economic inequalities of Apartheid by creating the necessary policy framework through several pieces of legislation including the Preferential Procurement Policy Framework Act and Codes of Good Governance, but the practical implementation and monitoring of these noble BEE policies remain a serious challenge. Ideally, preferential procurement should support the growth of black-owned and genuine black-empowered companies. Instead, entrenched procurement practices within both the private and public sectors stifle and stunt the survival of black businesses in general. Procurement patterns in the auctioneering industry continue to be skewed in favour of white-owned enterprises, largely dictated by past racial discriminatory practices. Most unfortunately, even the BEE policies meant to stimulate, support and sustain the development of black-owned auctioneering enterprises are subverted and abused by both the users of auctioneering services and white-owned auctioneering companies.

Instead of embracing the challenge to build the new South Africa by using the opportunity to transform and create genuine BEE entities, most previously advantaged white-owned companies make a farce of BEE by either doing fronting deals with no real substance that are just meant to fulfill and comply with minimum legal requirements or conveniently conjuring up BEE deals that are smokescreens for business expediency. More often than not, white companies either attract passive investors or create parallel Bantustan structures which masquerade as BEE companies while the existing businesses remain 100% white. The newly created smokescreen BEE structures are used to solicit work from clients requiring BEE credentials. Once obtained, the work is passed on to the 100% white-owned businesses for execution. No attempt whatsoever is made to build capacity in the newly created parallel BEE companies. In effect, the newly created BEE structures only exist in name, with no supporting structures of their own. Sometimes, both the parent company and offspring share facilities, i.e., same street address, same contact details, etc.

Ideally, companies which create these 'cosmetic' parallel structures should be blacklisted, but alas, not only do they exist, but thrive and often trump genuine black businesses. The big question is, "Why do these companies not invite the so-called black partners into their existing structures if these transactions are genuine"? Our fellow black colleagues who are either desperate or have power and money or access to both these resources deserve condemnation in this regard, as they are guilty of participating in those shameful and passive BEE deals by buying stakes in companies with no intention whatsoever to participate in management and skills transfer.

L&G, The lack of scrutiny for the genuineness of BEE companies makes a fallacy of empowerment and transformation in general. Most unfortunately, these unscrupulous companies succeed in their endeavours with the help of gullible clients, including government entities which countenance these practices. As Edmund Burke puts it, "***For evil to flourish, it is necessary for good men to do nothing***". Indeed, the world we live in today is very dangerous, not because of men doing evil, but because of those who let it happen. Look no further than the phenomenon of state capture to validate this theory. Genuine and sustainable BEE will remain a pipe dream for as long as users of auction services continue to countenance these subversive fronting practices. The flouting of BEE rules is such that the empowerment value brought by preferential procurement is still realized by whites – even if fronting is eliminated.

Auctioneering being a relationship business, it is difficult for black-owned auction companies to break into the boys club of longstanding industry cliques created over years, and even decades. Racism aside, we all know that like follows like. No wonder you have Jewish communities, Chinese communities, Portuguese communities and so forth. Don't get us wrong, there is nothing wrong with people associating, but it is problematic when such association are used to perpetuate past racial discriminatory practices.

The Breederbond may no longer exist officially and openly, but Afrikaners continue to support one another where they can. Most unfortunately, the same cannot be said for blacks. Those of us involved in the auction industry find it more difficult to get support from our fellow black brothers and sisters than from people of colour. The most frustrating reality is that it is more difficult for genuine black-owned auction companies to get business from government departments and SOEs. While black people occupy most senior positions in government and SOEs, middle management is still predominately controlled by white managers who seem to live in the past and harbour an attitude that suggests that it is business as usual. Private sector clients are worse. They bluntly tell you that the charter requires 25,1% hence it is their prerogative to use white-owned companies even where genuine 100% or majority black-owned companies with capacity exist. The question is, do they appoint the white-owned companies on the basis of their 25,1% BEE credentials or on the strength of their long-standing relationship with the 74.9% white partner? We are not for once suggesting that white-owned companies should be discarded. All we want is a fair, equitable and just share. At any rate, there are so few black-owned auction companies such that they would not cope with the work if that were to happen. However, it is shameful that even the few genuine black-owned auction companies are starved for work and perpetually fight for survival when white-owned companies are enjoying the more than 98% lion's share.

L&G, this situation cannot be allowed to continue. The lack of progress so far in the advancement of black-owned and genuinely black-empowered auction companies is already an indictment to the new democratic South Africa. It should be a business imperative to promote the active and meaningful participation of PDI's in the auction industry. It should also be a business imperative to promote and support genuine transformation within the auction industry, with the express aim of influencing real and meaningful change in the ownership, control and management of existing and new enterprises, including skills transfer and training.

Furthermore, it should be a business imperative to make the auction industry accessible to members of previously disadvantaged communities in order to increase the pool of previously disadvantaged people who own, control and manage existing and new enterprises within the auction industry, thus promoting sustainable development and creating employment. L&G, the decision to launch SAPAA today was prompted by the sorry state in which black auction companies find themselves. An assessment of our current situation made us realize how apologetic we have been over the years and jolted us into action. We have therefore resolved to embark on a very aggressive country-wide campaign immediately after this launch to lobby key stakeholders who are either users of auction services in the private and public sectors; not only to inform them about the fate of black-owned and genuinely black-empowered auction companies, but to also seek their support. Among others, we intend to target the following stakeholders and to achieve the following objectives:

1. National Treasury, Department of Trade and Industry and Department of Small Business Development regarding the preferential procurement of auction services exclusively from black-owned and genuinely black-empowered companies for all government (national, provincial and local) and SOEs. This should either be done through set-asides or subcontracting in accordance with existing or new preferential procurement policies.
2. The Department of Justice, particularly the Chief Master of the High Court in order to conscientise him about the need for a more equitable system of distributing work among auctioneers, particularly work flowing from liquidations. Existing longstanding triangular relationships among established attorneys, liquidators and predominately white auctioneers are so entrenched that it is extremely difficult for emerging black-owned auction companies to get allocations for liquidation auction work. The fact that the Insolvency Act subordinates the appointment of auctioneers to liquidators promotes inequitable appointment practices favouritism, and corruption. We propose that the Chief Master of the High Court should introduce a policy for the appointment of auctioneers for liquidation work. The scope of the Insolvency Act should also be extended to enable the Masters of High Courts to appoint auctioneers directly similar to the PDI system currently in place for liquidators.

A system of joint appointments similar to the one existing for liquidators should also be introduced, whereby Masters of the High Courts should appoint at least one provisional auctioneer from previously disadvantaged individuals in all matters where the estate is worth more than R5 million.

3. The Financial Services Sector (banks, insurance houses and pension funds), to conscientise them and create awareness about the need for a more equitable system of distributing work among auctioneers.
4. Other users of auction services, such as corporates (fleet management companies, car rental companies and big corporate fleet owners), property companies (residential, commercial and industrial) and mining houses to conscientise them and create awareness about the need for a more equitable system of distributing work among auctioneers.
5. Associations and business formations/organizations that regulate and govern secondary industries that either support or work hand in hand with the auctioneering industry, such as the Insolvency Practitioners' Society of South Africa (IPSSA), the Association for the Advancement of Black Insolvency Practitioners (AABIP), the Association of Insolvency Practitioners of Southern Africa (AIPSA) and the South African Institute of Chartered Accountants, to conscientise them and create awareness about the need for a more equitable system of distributing work among auctioneers;
6. Lobbying for and influencing the establishment of a statutory body to act as a watchdog and to promote the image of the auctioneering industry by; among other activities, regulating the qualifications, conduct, training and standards of auctioneers. The auction industry is an orphan. It has no reporting line to any single government department. We intend to adopt a multipronged approach in this regard, involving the diverse government entities which presently regulate or affect the auction industry in one way or another, including the following: Department of Justice (Insolvency Act and the Sheriffs Act, which currently the most auction work conducted by sheriffs), Department of Trade and Industry (Consumer Protection Act, possibilities exist to self-regulate the auction industry through an Industry Code in terms of Section 80 of the CPA), Department of Human Settlements (Estate Agency Affairs Act, which regulates immovable disposals. We are aware of the Property Practitioners Bill which seeks to repeal the Estate Agency Affairs Act), Department of Agriculture (Agricultural Produce Agency Act, which regulates livestock auctioneers) and South African Police Services (Second Hand Goods Act, which regulates warehouse auctions).

7. Media, both print and electronic to conscientise them and create awareness about the need for a more equitable system of distributing work among auctioneers.
8. Any other stakeholder relevant to the purpose facilitating the meaningful transformation of the auction industry.

We do not for once intend to ask for handouts or favours. All we require is for the playing field to be leveled so that auctioneering companies, black and white can compete in an equitable manner. However, it will be a fallacy to aspire for an equitable distribution of auctioneering work without a deliberate and definite program to correct past and current imbalances. Program Director, such a situation would be tantamount to what Achmat Noor calls ***'The insanity of doing what you have always been doing and expecting different results'***. President Johnson's famous address to the predominately black Howard University in the US in 1965 validates this argument: ***"You do not take a person who, for years, has been hobbled by chains and liberate him, bring him to the starting line of the race and say, 'You are now free to compete with all the others', and still justly believe that you have been completely fair. To achieve fairness, therefore, one must supposedly allow members of certain groups a chance to recover from the effects of previous disadvantages by giving them special help such: either extra training to qualify for positions which they can then achieve on merit, or else deliberate selection over better-qualified candidates, with special assistance after appointment"***.

L&G, this is not a new argument at all. As Marinus Daling once said, ***"Blacks are at a similar level of economic empowerment as Afrikaners at the turn of the 19th century. To achieve that objective, Afrikaner institutions such as Sanlam and Volkskas grew out of a concerted effort to increase Afrikaner participation in the economy"***. Some people are already arguing that it has been 23 years into democracy and markets should be left to regulate themselves. We say no to this. Our view is that the leveling of playing fields has not even begun.

We believe that intervention is necessary to redress past imbalances and create a climate conducive to the meaningful participation of blacks in untransformed industries such as auctioneering. As one SACP commentator puts it, ***“Leaving white capital to transform itself is like asking the devil to convert to Catholicism”***.

Surely, industries like auctioneering call for special measures that will level the playing field and enable blacks to compete with whites on an equal footing. While we acknowledge that business ideally thrives on competition regulated by the markets, there is a serious danger that black-owned and genuinely black-empowered auction companies will continue to be marginalized if artificial measures are not enforced initially to remove these barriers. Therefore, unless deliberate interventions are initiated, there is no hope that black-owned auctioneering companies will ever get a break.

Program Director, having said all the negatives about people who flout BEE rules, allow me to commend institutions like ABSA who have already started affirming black auctioneers by involving them in their mainstream businesses. We would also like to emphasize that SAPAA is not discriminatory, but non-racial. However, we are very serious about transformation as outlined in Schedule 1 of our Constitution. PDIs who claim to have acquired ownership must prove that the transaction involves actual payment for shares. Suspensive and conditional equity transactions shall not be considered for SAPAA membership. PDIs who claim ownership must prove that they share in decisions regarding the economic risk/gain of the business to the extent of their ownership; such as directorships and signing powers. PDIs who claim ownership must prove that they are involved in the business and make a meaningful contribution in its day-to-day management.

Program Director, before I sit down, allow me to introduce SAPAA's EXCO and additional directors present here today. L&G, these are the black-owned and genuinely black-empowered auctioneering companies that would like to make a meaningful contribution to South Africa's growth and job creation. Most unfortunately, their aspirations will remain pipe dreams unless good people like all of you gathered in this room take action. Surely, the meaningful involvement of the majority of South Africa's population not only as auctioneers, but also as buyers is an investment in our future to ensure social cohesion and economic sustainability. A class-based economy will lead to the same problems that the English subjected the Afrikaners to at the turn of the 19th century and the Afrikaners subjected blacks to during Apartheid.

L&G, SAPAA's launch today is an earnest appeal to you all for your support and assistance in our campaign to gain respectable market share within the auctioneering industry. We need your help. As I said earlier, we don't need handouts. We are professionals and are prepared to compete fairly, as long as the playing field is leveled. As Ghandi once said; '**You give a man a fish, he eats for a day. You teach man to fish, he eats for a lifetime**'. Not only did some of us learn to fish, we also bought fishing rods; all we are looking for are fishing ponds. Believe you me, these ponds are proving extremely difficult to find.

I thank you.