

BEEcoming OWNERSHIP COMPLIANT: 5 BASIC PRINCIPLES



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1. DEFINING BLACK PEOPLE

To understand B-BBEE Ownership, we must first consider the meaning of “Black people”.

As defined in the Broad-based Black Economic Empowerment Act of 2003 (B-BBEE Act), Black people means:

Natural persons who are African, Coloured or Indian (as well as certain persons of Chinese descent) who: are citizens of the Republic of South Africa by birth or descent; or became citizens of South Africa by naturalisation:

- before 27 April 1994; or
- after 27 April 1994 and would have been entitled to acquire citizenship by naturalisation before that date

2. OWNERSHIP IN THE B-BBEE SCORECARD

The B-BBEE scorecard comprises five elements, namely: Ownership, Management control, Skills development, Enterprise development and Socio-economic development. The most commonly debated element (other than procurement) and the element analysed in more detail in this article is Ownership.

Ownership counts for **25 points** out of the **105 points** available on the generic B-BBEE scorecard. It is one of the priority elements on the B-BBEE scorecard, and if the sub-minimum requirements for the net value portion of the ownership element are not met, a measured entity may be discounted one B-BBEE level. 40% of the 8 points for net value must be achieved for a company not to be discounted one B-BBEE level.

INDICATOR	DESCRIPTION	WEIGHING POINTS	COMPLIANCE TARGET
VOTING RIGHTS	Voting for Black People	4	25% + 1 VOTE
	Voting for Black Women	2	10%
ECONOMIC RIGHTS	Economic Interest to Black People	4	25%
	Economic Interest to Black Women	2	10%
	Black Designated Groups	3	3%
	Black People in ESOP		
	Black People in Broad-Based Schemes		
Black participants in Co-operatives			
New "Black" Entrants	2	2%	
REALISATION POINTS	Net Value*	8	
TOTAL		25	

3. OWNERSHIP AS AN ELEMENT

Ownership is a crucial element that must be considered with a holistic scorecard. It is not a compulsory element; therefore, a company failing to implement Ownership will not score points for Ownership on their B-BBEE scorecard. In addition, an entity will have its B-BBEE level discounted, as it does not meet the sub-minimum targets for net value. However, the entity may be ineligible for certain licenses and contracts if it does not satisfy the criteria to apply for such licenses or tender for contracts.

4. PRINCIPLES OF OWNERSHIP

Ownership is achieved through three sub-elements for recognition, namely:

1. **Exercisable voting rights** - Voting rights measures the percentage of votes held in a company by Black people at a shareholders meeting;
2. **Economic interest** - Is the rights of a shareholder to receive a return similar to dividends in the B-BBEE Codes. In the Mining Charter, Economic Interest means the right of a shareholder to receive a return similar to dividends and to receive capital value;

3. ***Net Value Realisation** - Assesses the debt funding of Black shareholders compared to the value of the equity held by them. The value of the equity must exceed the value of the outstanding equity by a prescribed amount on an annual basis. The equity value must exceed the outstanding equity by 100% by the end of the prescribed period.

Flow-through Principle

The percentage of Ownership is determined using the Flow-through principle, which effectively follows the shareholding chain up to the ultimate natural person shareholders. The direct and indirect ownership of Black people in a company is added-up to determine the total ownership by Black people.

5. COMMON OWNERSHIP TRANSACTIONS

Different ownership options to consider when structuring a B-BBEE deal includes:

- **Sale of shares** to third party investors or entering into business with new partners;
- **Establishing Broad-based ownership schemes or Employee share ownership programmes;**
- **Sale of Business to a third party** which allows the seller to recognise Black ownership based on the purchaser and the value of the sold business; and
- **Equity Equivalence Programmes** (for multinationals) where contributions are made to fund programmes instead of and in return for being able to recognise ownership by Black people.

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