

Why are B-BBEE collective ownership programmes beneficial for black people?



Businesses and beneficiaries of collective ownership programmes derive many benefits from collective ownership schemes to manage and house the wealth created through B-BBEE share ownership.

The main reason is that the assets are often transferred at a discount rather than at their fair market value. The true value of the equity is unlocked and locked in for the duration of the scheme, meaning that beneficiaries are 'locked-in' and cannot dispose of the shares or the rights thereto.

In a collective ownership scheme, the fiduciaries of the scheme exercise those rights of ownership to the exclusive benefit of the beneficiaries. The *B-BBEE Verification Manual* is very specific that a collective ownership scheme has voting rights by virtue of the fiduciaries, and these voting rights are attributed to the beneficiaries although they are exercised by the fiduciaries on behalf of the beneficiaries as a collective.

Who qualifies as a B-BBEE beneficiary?

The B-BBEE Codes in essence provide for two main categories of collective programmes, i.e. Broad- Based Ownership Schemes (BBOS) and Employee Share Ownership Programmes (ESOP). The beneficiaries are defined as follows–

- BBOS – the participation of specified and identifiable natural persons with benefits flowing from the rights of ownership. Those specified natural persons as beneficiaries are in most instances precluded from exercising voting rights on behalf of a collective programme.
- ESOP – means a worker or employee scheme, similar to a contribution employee benefit plan or employee share incentive programme.

There are various definitions for a beneficiary within the ambit of the respective B-BBEE Sector Charters, for example:

The Mining and Petroleum Charter defines beneficiaries as historically disadvantaged South Africans, which would include black people, all women and all disabled people as defined in the Constitution of SA.

- The Financial Services Charter defines beneficiaries of economic empowerment as all Black People, including women, workers, youth, people with disabilities and people living in rural areas. There are two Enterprise Development Beneficiary categories for which a beneficiary entity can qualify in order to receive Enterprise Development contributions
 - 50% black-owned business with an annual turnover of R35 million or below;
 - More than 50% black-owned business with an annual turnover of more than R35 million, or 25% black-owned business with a Level 6 B-BBEE Certificate or better.
- The Information and Communication Technology (ICT) Charter further emphasises those people who had been denied the right to vote prior to the operation of the Interim Constitution of 1993 and the South African Constitutional, 1996 Act. The ICT definition is the most onerous definition to comply with and the term “black people” is a generic term meaning Africans, Coloureds and Indians—
 - who are citizens of the Republic of South Africa by birth or descent or who became citizens of the Republic of South Africa by Naturalisation—
 - before 27 April 1994; or
 - on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

For South Africa to benefit from an inclusive economy, the potential exists for **ALL** persons and communities across the country to benefit from the B-BBEE objectives. *Broad-based ownership Scheme(s)* are tailor-made for this purpose. The benefit is not only for the beneficiaries of these schemes/programmes but will also contribute to the B-BBEE compliance of a measured entity utilising such schemes.

SERR Synergy specialises in unique structuring of collective ownership schemes to suit each entity's requirements to achieve the objectives of B-BBEE. We introduced *Empowerment Training and Development Programmes* to identify and develop black beneficiaries to obtain the required skills to ultimately participate as fiduciaries and not only as beneficiaries.

About our Author: Judy Kotze holds an LLB from the University of Pretoria and was admitted as an attorney of the High Court in 2015. She started working at SERR Synergy in 2015 where she is currently the Assistant Manager of the Corporate Legal Advisory in Pretoria setting up and advising businesses on unique collective ownership structures.

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