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Black ownership more important than B-BBEE scorecard level

The *amended* *Codes of Good Practice* are far reaching and Broad-Based Black Economic Empowerment (B-BBEE) or BEE impacts in one form or another, almost every participant in our South African economy.

Over the past few years, businesses were not required to have black ownership (refer to as *black owned businesses*) for commercial or even supplier consideration purposes. With the amended Codes there are greater emphasis on majority black ownership, particularly in relation to the sub-element of Procurement as well as Enterprise and Supplier Development. There is a retrospective shift in direction towards ownership, which now comprises 57% of the scorecard points.

Black ownership & government procurement

Currently, the black ownership requirement is becoming progressively important as a result of numerous factors, including our government's procurement policies that offer preference to black-owned suppliers. In the past, black ownership of 25,1% were acceptable but businesses are now opting to increase their black ownership component to 51%, with a 30% black female ownership element.

Ownership solutions

For Generic Enterprises (entities with an annual turnover above R50 million) it is important to note that black ownership is favoured above a low level on the scorecard. Some generics would consequently choose to have a low scorecard level and a high black ownership and black female ownership combination.

For Qualifying Small Enterprises (entities with an annual turnover below R50 million), an enhanced Level 1 (135% recognition level) will apply if the entity is already 100% black owned or Level 2 (125% recognition level) if 51% or more is black owned without completing a scorecard. This may be an accelerated way to an acceptable BEE level and carries no additional costs associated with *donations* or skills development etc.

Finding black shareholders

Finding a black partner or shareholder that shares your values and the same business principles can be a challenging task. The perfect business partner would be a likeminded black partner or shareholder to buy a stake in the business. This could be mutually beneficial for all concerned parties as such shareholders could bring their own set of expertise and future business strategies to the table. Alternatively a business could enter into a joint venture with one or more black-owned entities. This usually take place for a particular tender, with each entity within the joint venture retaining its independency.

Shareholding structures

The BEE Codes also provide for indirect shareholding, for example a Trust, co-operative, Broad-Based Ownership Scheme (B-BOS) or Employee Ownership Programme (ESOP). Enterprises often opt for these type of indirect shareholding structures and many businesses have benefited from an ESOP structure. These ownership or employee-incentive structures are not exclusive to the BEE ownership framework, but originated from section 97 of the Companies Act.

*About the author**: Gideon Gerber** is one of SERR SYNERGY's founding directors and an admitted High Court attorney with more than 30 years' experience in Business Structuring & Compliance, Training, Skills Development and Business Compliance in South Africa, the UK and Namibia. He also writes articles for the Business Day and Landbouweekblad that concerns BEE Matters. Follow the link to this full article: BEE Matters: Finding the right BEE business partner is no easy ride*.