

B-BBEE scorecard: naturalisation - what does it mean and how can it benefit BEE points?



The Broad-Based Black Economic Empowerment (B-BBEE) Codes of Good Practice make provision for the definition of “Black People”, who ultimately qualify to participate and benefit from the B-BBEE programme and for measured entities to gain BEE points for implementing initiatives to benefit such participants.

What is the definition of ‘Black People’?

“Black People” is a generic term which means Africans, Coloureds and Indians

(a) who are citizens of the Republic of South Africa by birth or decent; or

(b) who became citizens of the Republic of South Africa by naturalisation-

(i) before 27 April 1994;

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

The date of 27 April 1994 is the date the Interim Constitution of SA was adopted.

In a previous blog we discussed *the importance of citizenship and black ownership points on the bee scorecard*. This blog focuses on the term *naturalisation*, its meaning and the application thereof to benefit from BEE points.

What is naturalisation?

Naturalisation is a legal process whereby a non-citizen of a country acquires citizenship of an adopted country. The process includes an application to the Department of Home Affairs and providing all the supporting documents required for such an application to be successful. More information regarding this application process and the required documentation can be obtained from the Department of Home Affairs website.

Section 4 of the *South African Citizenship Amendment Act 17 of 2010* describes citizenship by naturalisation as follows:

- Anyone who was a South African citizen by naturalisation before commencement of the act;
- Anyone who was granted a certificate of naturalisation by the Minister;
- Anyone issued with a certificate of naturalisation is regarded as a South African citizen from date of issuing the certificate;
- Children born in South Africa from parents who are not South African citizens, qualify to apply for South African citizenship when–

(i) they become major;

(ii) they have lived in South Africa from date of birth to date of becoming major;

(iii) the birth was registered in accordance with the provisions of the *Births and Deaths Registration Act, 1992*.

Section 5 of the *South African Citizenship Amendment Act 17 of 2010* further provides the following criteria that have to be met for the Minister to grant a certificate of naturalisation to a foreigner:

- He or she has permanent residency in the Republic;
- He or she has been a resident in the Republic for a period of at least five years immediately preceding the application for naturalisation;
- Parents or guardians who qualify in terms of (a) and (b) above may apply for naturalisation on behalf of their minor children;
- A foreign spouse or surviving spouse of a South African citizen may also apply for naturalisation if the above criteria for (a) and (b) were met during the marriage.

A foreigner must meet a set of criteria to obtain South African citizenship by means of naturalisation. It is further clear that such naturalisation status is awarded by the Department of Home Affairs upon successful application by a foreigner. The issuing of a certificate of naturalisation means that a foreigner can be regarded as a South African citizen and qualifies in terms of *the definition for "Black People"*.

What is the benefit of naturalisation status?

In essence, naturalisation can be seen as a tool to include foreigners in the BEE space and can possibly award them with an opportunity to earn BEE points for measured entities on all the elements of the BEE scorecard.

In terms of the BEE scorecard, naturalised foreigners can participate in ownership structures. They may be appointed in management positions or participate in *skills development initiatives*. They may set up businesses and participate in the procurement chain or venture in enterprise and supplier development initiatives. Socio-economic development contributions made to naturalised foreigners will also count towards BEE points.

In conclusion

Foreigners, in general, do not count towards any BEE points on the scorecard. Think again. A naturalised foreigner that can provide clear proof that he or she has been naturalised and are in possession of a valid naturalisation certificate issued by the Department of Home Affairs and if he or she meets all the other criteria of the definition for "black people", will count towards BEE and can earn points for measured entities on any of the elements of the *BEE scorecard*.

The important proviso in respect of those persons who obtain citizenship, by means of sub clause (b)(ii) of the definition of “black people” alluded to above, namely that they would have been entitled to acquire citizenship by naturalisation prior to 27 April 1994, needs to be heeded. If anything would have disqualified a person on or prior to 27 April 1994 to become a citizen by means of naturalisation, even if such a person is granted citizenship after 27 April 1994, then such a person would still be a citizen of South Africa but do not fall within the ambit of the definition of “black people” and would not qualify as an eligible participant in terms of the B-BBEE programme.

SERR Synergy assists businesses to implement viable B-BBEE initiatives and achieve optimal points for their B-BBEE scorecards.

About the Author: Yolandi Rautenbach joined SERR Synergy in 2019 as a Project Manager in the B-BBEE Department, Pretoria. She holds a BCom (Law) [2008] and LLB [2010], as well as MDP [2016] diploma. She has been involved with B-BBEE for the last 7 years.

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