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The importance of Citizenship and Black Ownership points on the BEE Scorecard



Ownership is one of the most important elements of the BEE Scorecard. It is a priority element, which means a sub-minimum must be scored for the Net-Value component to avoid a lower level on a BEE certificate.

An entity earns points for Ownership based on the participation of Black people in its rights of Ownership, be that direct Ownership or via an entity.

What then qualifies as "*Black Ownership*"?

The Amended Codes of Good Practice defines Black People as a generic term meaning Africans, Coloureds and Indians who–

- *are citizens of the Republic of South Africa by birth or descent; or*
- *became citizens of the Republic of South Africa by naturalisation–*
- *before 27 April 1994*
- *on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.*

On 18 June 2008, the High Court in the case of *Chinese Association of South Africa and others vs the Minister of Labour and others, 2008* extended the definition of Black People to include Chinese people.

Focusing on the definition above, two important concepts need attention, namely citizenship and naturalisation. Only Black People who are citizens will earn points for Ownership participation. Citizenship is governed by the Citizenship Act, Act 88 of 1995, as amended by the Citizenship Amendment Act, Act 17 of 2010.

According to the Amendment Act, there are three ways in which a person can become a citizen of South Africa, namely by birth, descent and naturalisation. For the purpose of this blog, we will discuss each of them in detail.

Citizenship by birth

Any person who, prior to 1 January 2013, was a citizen through birth, or a person born in or outside South Africa whose parents or parent is a South African citizen, shall be deemed a citizen through birth. Any person who is born in South Africa but does not qualify for citizenship through the aforementioned, shall be deemed a citizen through birth if they do not have citizenship or nationality of any other country or have a right to such citizenship or nationality, provided that the birth is registered in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992). If a person’s parents have permanent residency in South Africa but are not citizens, such person shall qualify for citizenship if he/she has lived in South Africa since birth and if such birth was registered in terms of the Birth and Deaths Registration Act.

Citizenship by descent

If someone is adopted in terms of the Children’s Act, 2005 (Act 38 of 2005) and the birth is registered in terms of the Births and Deaths Registration Act, such person shall be deemed a citizen through descent.

Citizenship by naturalisation

Any person who, prior to 1 January 2013, was a citizen though naturalisation shall now also be deemed a citizen though naturalisation. In order to become a citizen through naturalisation, a person requires a certificate of naturalisation as a South African citizen. A certificate of naturalisation may be granted by the Minister upon application in the prescribed manner.

The naturalisation process

The Department of Home Affairs confirms that application for naturalisation shall be made as follows:

- Application can only to be made if the applicant had been on a permanent residence permit for a period of 5 years from the date such permit was granted.
- The permanent residence permit must be confirmed by Immigration Services by way of a written and signed letter.
- A criminal record check must be requested from SAPS, and confirmation thereof must accompany the application. The SAPS Record must be valid for 6 months.
- Applicants must obtain police clearance and a letter of acceptance of dual citizenship from their country of origin.
- Applications must contain a PR identity number and a copy of the applicant's ID.
- Applications must be accompanied by proof of language proficiency.

Permanent residency does not automatically mean a person is a citizen (see point 1 above). Also, if a person has a valid South African ID document, it does not make him/her a citizen. ID documents may also be issued to people with permanent residency.

As the industry leaders in *BEE Consulting*, *SERR Synergy assists business owners with B-BBEE compliance matters* and the implementation of a workable BEE strategy.

About the author:

Audrey Cloete obtained her LLB degree from the North-West University Potchefstroom. After 7 years in legal practise, she changed career paths by entering the corporate environment in 2009. Audrey joined SERR Synergy in 2015 where she currently works as the National Verification Manager.

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