

Beneficial eligibility in terms of the B-BBEE Codes



One of the main objectives of the B-BBEE initiative is to promote economic transformation to achieve meaningful participation of black people in the economy and a substantial change in the racial composition of ownership and management structures of existing and new enterprises.

Defining the term ‘black people’

When examining the B-BBEE Act, there is a *clear definition of “black people”*; however, the question is how one can be declared, or seen as being “coloured” and which aspects need to be considered to participate in *the advantages of the B-BBEE initiative*.

The Broad-Based Black Economic Empowerment Act 53 of 2003, as amended by Act 46 of 2013 (hereinafter referred to as the B-BBEE Act) defines a “black” individual as a person falling within the following definition:

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

1. *who are citizens of the Republic of South Africa by birth or descent; or*
 2. *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.*

Although the above definition seems to be easy enough when distinguishing between African, Indian and white individuals, the line is blurred when defining the term “coloured”.

The now-repealed Population Registration Act of 1950 defined “coloured” individuals as persons who are neither white nor black. The definition is rather ambiguous and by no means provides a clear guideline in defining “coloured”. This has given rise to opportunistic individuals who want to take advantage of the B-BBEE system.

How can one be classified as ‘coloured’ in the context of B-BBEE?

A conclusive answer to the question of how one can legitimately be classified as “coloured”, will unfortunately not be found in legislation. One will have to seek advice and guidance from the courts in this regard.

In an application that was brought before the Pretoria High Court in 2017, the applicant sought clarification from the court on the classification of “coloureds” in terms of the B-BBEE Act. The application relied on the following evidence in support of his claim:

- The applicant stated that his father was a white individual while his mother was defined as a “coloured” woman. They were not married;
- His father registered him as a European citizen at birth; however, he never enjoyed any of the advantages of being a European citizen under the apartheid laws and his father was not a supporting figure while he grew up;
- He grew up with his mother’s family who were all classified as “coloured”;
- He grew up in a “coloured” neighbourhood in Cape Town;
- The applicant’s grandmother and mother and all the remaining siblings of the applicant were classified as “coloured” individuals.

Subsequent to the above facts being presented, the court granted the application, and the applicant was legally declared coloured in terms of the B-BBEE Act by way of a court order.

In conclusion

When examining the above application, it is not a “one-size-fits-all” recipe and it is clear that each matter will be judged on its own merit. This is merely an indication that in order for one to establish oneself as “coloured”, there needs to be sufficient proof that one had lived as a “coloured” person and does not merely want to be classified as a “coloured” individual to reap the advantages it holds with reference to *B-BBEE*.

SERR Synergy assists businesses to implement viable B-BBEE initiatives and ensures alignment of initiatives with the legal requirements of the B-BBEE Codes. 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 the Author: Carel Joseph Dauth obtained his BCom Law and LLB degrees from the North West University and was admitted as an attorney in 2022. Carel joined SERR Synergy in 2022 where he currently holds the position of Corporate Legal Advisor. He specialises in B-BBEE Ownership and prides himself on assisting companies with their B-BBEE requirements.

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