

## **B-BBEE REQUIREMENTS FOR JOINT VENTURES**

### **1. Who are we?**

The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established as an entity within the administration of the Department of Trade, Industry and Competition (“the dtic”) by the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”). Its role includes overseeing the implementation of the B-BBEE Act and acting against fronting practices.

### **2. The Purpose of the Brochure**

This brochure aims to provide guiding principles for the measurement of joint ventures within the context of B-BBEE.

### **3. What is a Joint Venture?**

The structures in business are not always simple. The implementation of B-BBEE has revealed various complex structures, which include joint ventures.

The legal dictionary (<https://legaldictionary.net/joint-venture/>) defines a joint venture as a business arrangement wherein two or more parties, whether as individuals or entities, enter into an agreement to combine resources for a specific business undertaking for profit.

Two types of joint ventures may be used. Firstly, an incorporated joint venture, which means that an entity has been incorporated and governed in terms of the Companies Act. In that case, the incorporated entity will have to determine its own B-BBEE

measurement in line with the principles outlined in paragraphs 4, 5 and 6 of Statement 000 of the Codes of Good Practice (the Codes). Secondly, there is also an unincorporated joint venture, and this is where there is no incorporated entity, and in that case, a consolidated B-BBEE scorecard is required for the joint venture.

An unincorporated joint venture will be governed by the joint venture agreement, stating the responsibility of each party, how profits will be shared, and responsibility for losses incurred and the costs attached therein.

#### **4. REASONS FOR ESTABLISHING A JOINT VENTURE**

There are various reasons why entities or parties decide to enter a joint venture arrangement and that may include, among others, the need for:

- a) Exploring new markets;
- b) Increasing skills and resources;
- c) Growth and diversification;
- d) Collaboration and spreading costs; and
- e) Skills and knowledge transfer.

#### **5. B-BBEE Requirements for Unincorporated Joint Venture Certificates**

When parties choose to access any economic benefit through an unincorporated joint venture, in terms of the B-BBEE Act, the joint venture must submit its own consolidated B-BBEE certificate or sworn affidavit.

##### **5.1 Before 1 December 2019**

When the amendments to the Codes came into effect on 1 May 2015, including the prescription for the use of sworn affidavits for Exempted Micro-Enterprise (EMEs) and 51% and 100% black-owned Qualifying Small Enterprises (QSEs), the Codes did not provide guidance on the consolidation of B-BBEE sworn affidavits where

parties who qualify as EMEs or a 51% and 100% black-owned QSE opted to form an unincorporated joint venture.

This oversight meant that an unincorporated joint venture for entities relying on sworn affidavits before 1 December 2019 were invalid. (The invalidity did not apply to entities that are governed by the amended Construction Sector Code which specifically included rules for joint ventures.)

However, entities that qualified for the use of a B-BBEE Certificate issued by a verification professional accredited by the South African National Accreditation System, were able to determine a consolidated B-BBEE scorecard for the unincorporated joint venture. This provision meant that the entities only had to approach a SANAS accredited verification agency/professional with their individual B-BBEE Certificates, for the verifier to produce the joint venture B-BBEE Certificate.

## **5.2 After 1 December 2019**

As a result of the amendments effected to the Codes through Notice Number 303 of Government Gazette Number 42496 gazetted on 31 May 2019, entities that use B-BBEE sworn affidavits and B-BBEE Certificates are now able to use a consolidated unincorporated joint venture scorecard. This is how it works:

- a) The parties will need to first obtain a valid B-BBEE sworn affidavit or B-BBEE Certificate for their individual enterprises. Should the individual entity's B-BBEE Certificate or Sworn Affidavit be invalid, the joint venture certificate will also be invalid.
- b) The parties will then need to consolidate the compliance data based on a weighting in accordance with the joint venture agreement. This means that the parties scores will be weighed according to their proportionate share in the joint venture and added together for a combined score of 100.

- c) The consolidation of the compliance data shall be based on a weighting in accordance with the joint venture agreement relevant to the specific joint venture. Therefore, should the two or more companies enter an unincorporated joint venture their respective scores in terms of the relevant Codes of Good Practice will be weighted according to their proportionate share in the joint venture.
- d) Should an entity qualify in terms of the QSE scorecard, its B-BBEE score of 100 must be used to calculate the consolidated score.
- e) 51% black-owned EMEs and QSEs will qualify for a score of 95 points, while 100% black-owned EMEs and QSEs will qualify for a score of 100 points.
- f) EMEs with less than 51% black ownership will qualify for a score of 85 points

The process described in part (b) and (f) can only be done by a SANAS accredited verification agency/professional.

A consolidated joint venture will determine its B-BBEE status in line with the principles of Statement 000 of the Codes of Good Practice based on whether the entity is an EME, QSE or large entity.

## **6. Validity of an Unincorporated Joint Venture Certificate**

The same process outlined in the Practice Guide 01 of 2018 issued by the B-BBEE Commission on determining the validity of a B-BBEE verification certificate, B-BBEE Certificate and Sworn Affidavit must be utilised to test the validity of an unincorporated joint venture certificate.

A joint venture certificate is valid for a period of twelve (12) months, and only applicable to a specific project. This means that the parties will need a new joint

venture certificate every time they want to access a new project opportunity or initiative.

## **7. General Matters**

During the execution of its mandate, the B-BBEE Commission has noted the following concerns (not an exhaustive list) regarding joint venture structures:

- a) The absence of an agreement governing the relationship between the parties, such as outlining their roles and responsibilities, including among others how profits will be shared.
- b) The use of joint venture initiatives to partner with black people or a black-owned entity merely to access economic opportunities, and not to empower black people.
- c) Limitations or restrictions on the participation of black people in decision-making over the affairs of the joint venture.
- d) Lack of good corporate governance in relation to the affairs of the joint venture such as limiting black people from accessing the financial records of the joint venture.
- e) What is implemented in practice is different from the commitment in the joint venture agreement, resulting in conflict and fronting. For example, not having a separate financial account for the joint venture or deviating from the profit-sharing arrangement to the disadvantage of black people.

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