

# FOREWARNED IS FOREARMED

## WHAT TO EXPECT FROM YOUR VERIFICATION AGENCY

The B-BBEE industry is one that has always been under scrutiny. Whether it stems from business at large, the general public or the various regulatory bodies like SANAS, the Department of Trade & Industry or the B-BBEE Commission. Unfortunately, in many cases, this scrutiny is not uncalled for, as some representing the B-BBEE industry cross the line of ethics. However, recently, there has been accountability from regulatory bodies for those choosing to circumvent the Codes.

The B-BBEE industry is an ever-changing, complex one that requires all those working in it to be fully versed in all aspects of the Codes, primarily when Gazettes or amendments to the Codes are published.

The verification side of B-BBEE is far more monitored and scrutinised than that of the consultancy side. Therefore, Verification Agencies have various internal cross-checks in place to back up their work, with the final accountability lying firmly with the Technical Signatory, the person who signs off a B-BBEE Audit.

This article intends to outline what to expect when preparing for a B-BBEE Audit or engaging with a Verification Agency before and during a B-BBEE Audit.

### What is the role of a Verification Agency vs that of a B-BBEE Consultant?

First and foremost, be aware of the difference in service offerings that a B-BBEE Consultant can offer compared to that of a Verification Agency. There must be a clear separation between the two services provided by two unaffiliated parties.

A B-BBEE Consultant is permitted to analyse an organisation's B-BBEE focus, provide targets and then guide how an organisation can achieve B-BBEE milestones.



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For example, they may consult directly on the specifics on how to structure an organisation's Skills Development, Enterprise Development, Supplier Development or Socio-Economic Development spend.

A B-BBEE Consultant can link an organisation to potential beneficiaries or outsourced service providers. They can assist an organisation in building their B-BBEE Audit File to ensure sufficient initiatives are claimed to meet the strategic goals of an organisation and provide any necessary evidence.

Most importantly, B-BBEE Consultants are expected to be versed on the Codes so they can assist an organisation in navigating the complexity of their B-BBEE Strategy. However, this is to a point, as the B-BBEE Consultant and Verification Agency play different roles and have different levels of scrutiny and accountability. A B-BBEE Consultant will be able to ensure that all their recommendations are accepted with a client's chosen Verification Agency.

The core role of a Verification Agency is to audit initiatives undertaken based on evidence provided, then issue a SANAS Accredited B-BBEE Certificate based on the actual audit outcomes. Other services Verification Agencies offer is that of a 'Gap Analysis', whereby targets are defined and provided for, or the calculation of a Year-To-Date snapshot. Contrary to a B-BBEE Consultant, they are not permitted to guide the implementation of the Gap Analysis and Targets. Following the issuing of a B-BBEE Certificate, they will address any dispute or significant change that would impact the overall score by means of a Re-assessment or Special Evaluation of the B-BBEE Audit.

Verification Agencies and B-BBEE Consultants must 'stay in their lane' as their services must not overlap, as overlapping may cause a conflict of interests.



The differentiating roles between a Verification Agency and a B-BBEE Consultant are:

- > A B-BBEE Consultant is not permitted to provide verification services.
- > A Verification Agency is not allowed to guide an organisation in the implementation of B-BBEE initiatives.

Verification Agencies and B-BBEE Professionals are often in a good position to refer one another's services to their clients. However, do not be guided to one service provider; instead, request a list of three then conduct independent due diligence on each.

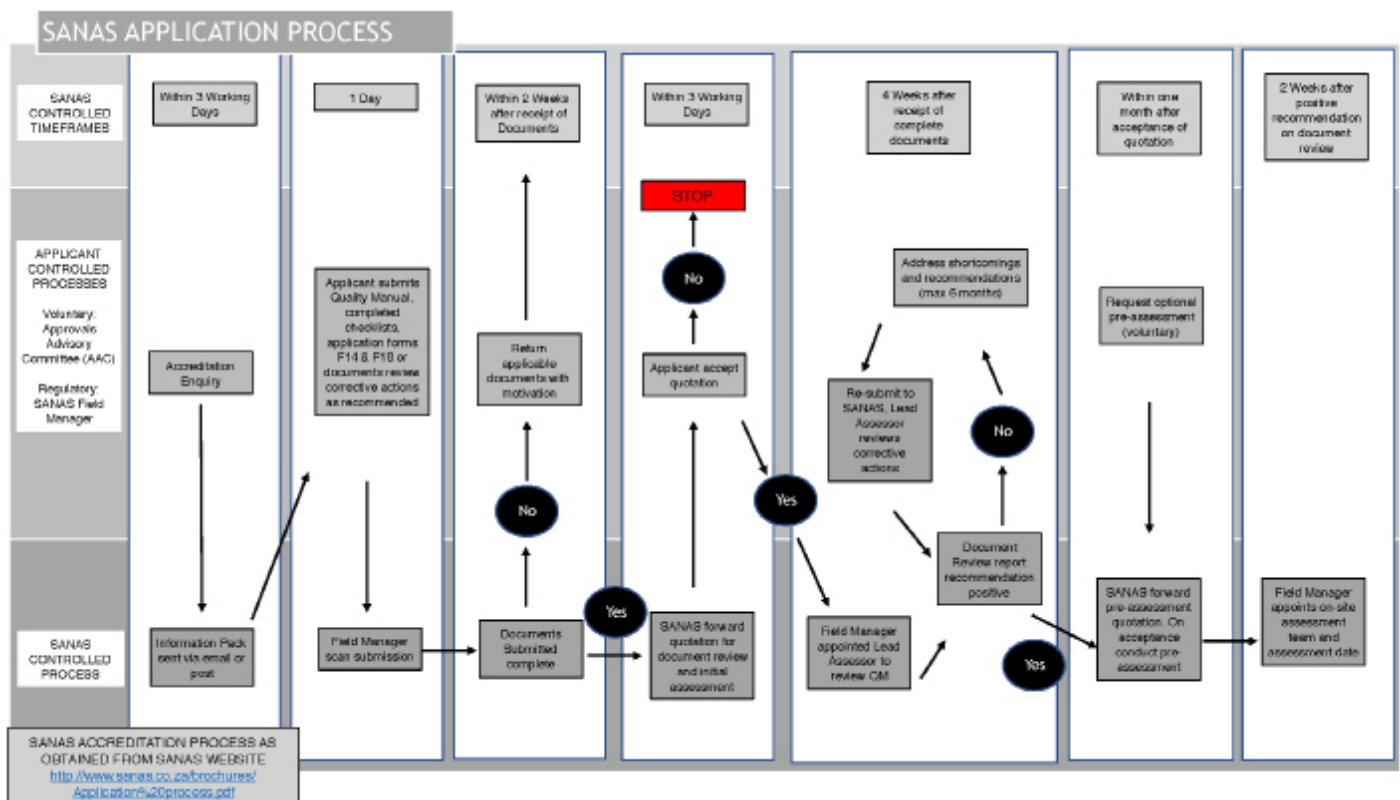
## What process is necessary for a Verification Agency to be SANAS accredited?

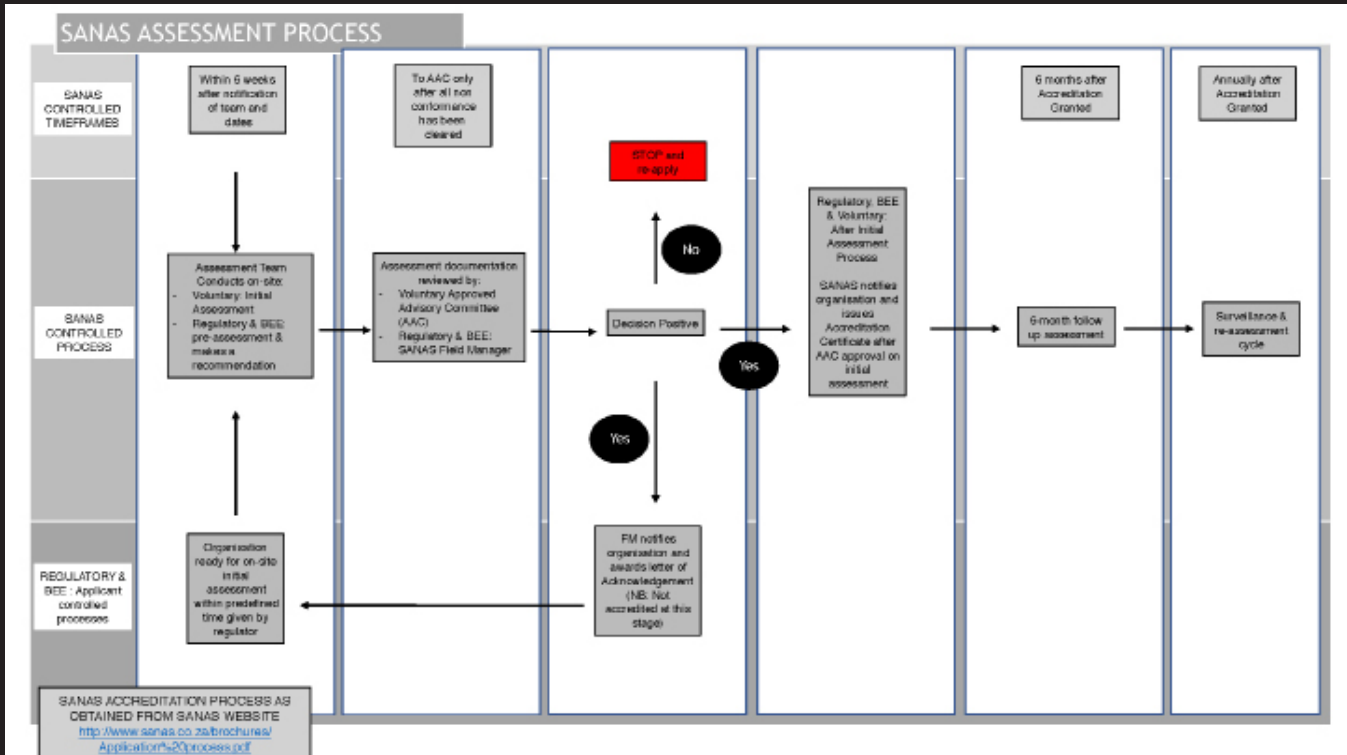
The R47-02 is a Management System guideline issued by SANAS in September 2007. This document is the foundation that outlines the fundamental process, responsibilities and gambits to which accredited Verification Agencies must adhere in order to maintain their operating license and accreditation on behalf of The Department of Trade & Industry.

I still recall my first day in the B-BBEE space working for a reputable Verification Agency in a Client Relations role. The first piece of reading material given to me was the R47-02. It was my induction into the B-BBEE space, which speaks volumes as to the significance of this document, as it outlines the ethical standards for those operating in the B-BBEE space.

Before a Verification Agency can operate, they endure a stringent evaluation of their processes and procedures. The accreditation process begins with a formal application to SANAS for accreditation which includes the submission of all internal policies and procedures. The applicant is required to elaborate on how a B-BBEE Audit would be conducted end-to-end, including sampling procedures and appeal policies, to name but a few.

A separate accreditation is necessary for each Sector Code. For example, if a Verification Agency is accredited on the Generic Codes only, they would not be able to conduct a B-BBEE Audit on an organisation measured on the Construction, or Tourism Sector Code unless they obtain the said accreditation.





To ensure conformance to the high standards set out by SANAS, six months after accreditation is initially awarded, a SANAS Audit takes place. The SANAS Audit evaluates whether B-BBEE Audits conducted during that timeframe were in line with the requirements outlined in the R47-02 document.

Like any financial audit, an external SANAS Assessor will spend two to three days at the premises of a Verification Agency. During this time, they review completed files, evaluate evidence, issued B-BBEE Certificates and sampling methodologies. A SANAS Audit primarily evaluates a Verification Agency's processes and interpretations of the Codes of Good Practice in relation to what evidence they have allowed as a contribution, and ensure that they are in line with the R47-02, SANAS requirements and the B-BBEE Codes themselves.

A SANAS Audit evaluates whether a Verification Agency has robust processes in place to ensure B-BBEE Audits are conducted without fear or favour. The process includes the cross-checking of calculations and re-examining evidence to uncover human errors. Any issues identified during an audit are duly noted, and a 'non-conformance' is issued per dispute uncovered. Each non-conformance must be addressed with corrective actions.

Generally, a non-conformance is issued when a service, product and/or process does not meet the SANAS specifications or requirements. Depending on the severity of a non-conformance issued, a Verification Agency will either be allowed time to resolve the issue, be temporarily suspended or, in the worst case, have their SANAS accreditation suspended permanently.

Following the initial Audit after accreditation, another one will be conducted six months later. After that, SANAS will conduct an audit on an annual basis.

## What factors should be taken into account before engaging with a Verification Agency?

Vital to sourcing a Verification Agency is the ability to identify red-flag areas. Remember the first rule of thumb: if something seems too good to be true, it probably is. Too good to be true translates to a guarantee of a specific status level; or a unique offering that only they as your Verification Agency can offer. Red-flags include pressure to use a particular B-BBEE Consultant from their stable of suppliers to make the B-BBEE Audit process easier. Bear in mind that any audit process is not supposed to be easy or have any guarantees attached to it; instead, it is about evaluating the evidence presented.

When organisations choose a financial auditing firm, they go to great lengths to check they are accredited, ethical and conduct themselves in line with legislation. The same principles must apply when engaging with a Verification Agency. Although most organisations receive Verification Agency referrals from their B-BBEE Consultant, these must not be accepted at face value. Do due diligence. Take the time to meet with at least three Verification Agencies, do an on-site visit and ascertain the following:

- > Are they accredited to conduct a B-BBEE Audit on the Code on which your organisation is measured?
- > How do they apply and interpret the Code on which you are measured? As with any legislation, there can be a difference in interpretation of various aspects of a scorecard. Having foresight on what a Verification Agency will or will not accept will have an impact on the outcome of a B-BBEE Audit.
- > Are the Verification Analysts, who will conduct the B-BBEE Audit, fully versed on the Code on which you are measured?

- > Do they have the internal capacity to perform a B-BBEE Audit? Consider the size of your organisation and the resources that would be necessary to conduct a B-BBEE Audit within a predetermined timeframe.
- > Is any part of the B-BBEE Audit outsourced?
- > What is their costing structure?
- > Do they receive commissions for referred work to B-BBEE Consultants?
- > What references can they offer? A reputable Verification Agency will have a solid track record.
- > Do they appear in the SANAS directory of accredited Verification Agencies on the SANAS website? Ensure that the status reflects "Accredited" and not "Withdrawn" or "Suspended".
- > What is their SANAS BVA number? Allocated to all SANAS accredited Verification Agencies is a unique BVA number that appears on all issued certificates and their website. On an issued certificate ensure that the BVA number appearing belongs to the Verification Agency contracted to do the B-BBEE Audit.
- > What is their Status Level? An accredited Verification Agency is obligated to hold a Status Level between 1 and 3. This is a requirement as per Paragraph 6.1.1(e) of Statement 005 issued 23<sup>rd</sup> September 2011 in Gazette #34612.

## What is the B-BBEE Audit process?

The B-BBEE Audit process is similar to that of any financial audit. After contracting a chosen Verification Agency, the process follows a typical flow of events. However, these may vary from agency to agency. The flow of events hereunder is non-exhaustive:

- > A Verification Agency provides an organisation with a document checklist of what evidence is necessary for the B-BBEE Audit File submission.
- > Submission of the B-BBEE Audit File to the appointed Verification Agency for review.
- > The Verification Agency will allocate a Verification Analyst to work through the evidence presented in the B-BBEE Audit file. The analyst will request the following:
  - The proposed date and time of the on-site B-BBEE Audit;
  - A list of outstanding evidence not included in the B-BBEE Audit File; and
  - Schedule of 'samples' necessary to conduct the on-site B-BBEE Audit. Post audit, an organisation has seven days to submit any outstanding information to the Verification Analyst.
- > Upon finalisation of the B-BBEE Audit File, it goes to the Technical Signatory for final review, sign-off and issuing of the B-BBEE Certificate. However, when arise, the Technical Signatory can request further evidence before issuing the B-BBEE Certificate.

A B-BBEE Certificate can only be issued once the Technical Signatory is satisfied with all sampling criteria, and evidence is in line with SANAS requirements. The Technical Signatory is the person who takes final accountability of a B-BBEE Audit.

## How is evidence analysed?

To date, the Verification Manual for the Amended 2013 Codes of Good Practice has not as yet been Gazetted.

However, the Verification Manual published as Gazette #31255 in July 2008 drafted on the Old Codes provides the guidelines that are followed in the interim.

Due to the magnitude of evidence submitted in the B-BBEE Audit File, a B-BBEE Audit is conducted through processing 'samples'. Effectively, this is an action or process that extracts information for analysis and allows a Verification Analyst to ascertain whether due process was followed. If the extracted 'samples' corroborate a claim, the assumption is that the evidence is indeed correct and passes the audit requirements. However, if the selected 'samples' do not meet the criteria or contradict the submitted information, it is disallowed. Subsequently, no points are allocated to an element from which the failed 'samples' were derived.

The following, based on the Generic Codes, is evidence that is required to support an organisation's claim:

## Ownership

A list of shareholders where each will be interviewed one-on-one to confirm:

- > Race and gender;
- > Decision-making authority of 'Black' Shareholders;
- > Directors emoluments; and
- > Debt outstanding on shares.

## Management Control

- > List of employees categorised by level of management and race for comparative purposes;
- > Copy of payroll to corroborate employment status;
- > Designated Employers must provide copies of EEA2, EEA4 and confirmation of submission to the Department of Employment and Labour.

## Skills Development

- > Proof that they are compliant with the Skills Development Act by means of a copy of their most recent WSP/ATR submission and approval letter;
- > A list of training interventions, evidenced by claims sheets;
- > For each training intervention, the following evidence is typically required:
  - An interview with the trained delegate to confirm course particulars;
  - A copy of the invoice and proof of payment; and
  - A copy of contracts and SETA registration documents for Learnerships, Internships and Apprenticeships.

## Enterprise & Supplier Development

### Preferential Procurement

- > A list of suppliers, including their relevant B-BBEE Certificates;
- > A copy of a detailed supplier ledger for the audited financial period.

Samples are drawn from suppliers that qualify as:

- Large Enterprises, QSEs and EMEs;
- 'Black'-owned organisations;
- 'Black' Woman-owned organisations; and
- Designated Groups.

### Enterprise Development & Supplier Development

A sample pack of documentation to ensure claims uphold the intention of these elements.

### Socio-Economic Development

A sample pack of documents to ensure claims uphold and speak to the intentions of the Codes. The expectations of Sector Codes often differ from code to code. Therefore, there may be specific requirements unique to a particular sector, which requires further samples during a B-BBEE Audit.

## Under what circumstances would a B-BBEE Certificate be re-issued following a dispute or relevant amendments to an organisation's structure?

Following the issue of a B-BBEE Certificate, an organisation's circumstances may change, which may have an impact on the overall B-BBEE score of the organisation. There are various reasons for this; for example, it might be a consequence of a change in the ownership structure only implemented following the issuing of a B-BBEE Certificate. Otherwise, the emergence of relevant evidence that was not included during the B-BBEE Audit process or an error uncovered following the B-BBEE Audit may be processed as a complaint or an appeal. The outcome of any such circumstances may result in the re-issuing of an organisation's B-BBEE Certificate.

The Verification Manual published as Gazette #31255 contains the guidelines necessary for a Verification Agency relating to the re-issue of a B-BBEE Certificate. It provides for the methodology, planning, record-keeping and reporting requirements, as well as a list of applicable documentation required per element and procedures to be followed for each element. This Gazette further addresses the circumstances that may result in a change of a B-BBEE score and the procedures that follow during the re-issue process.

## What are the options in terms of re-issuing a B-BBEE Certificate?

There are two remedies available for re-issuing a B-BBEE Certificate:

### Special Evaluation

In the case where an organisation disagrees with their B-BBEE score, the legislation provides for the right to appeal. If upheld, a Special Evaluation process will take place to remedy this. The Verification Agency's policy and procedure dictate that this information be made publically available and accessible on the website of the organisation disputing the B-BBEE Audit outcome.

The guidelines for a Special Evaluation are outlined in clause 10.5 of the Verification Manual, where it states, "It may be necessary for the Verification Agency to conduct evaluations of measured entities at short notice to investigate complaints or in response to changes." There are various circumstances upon which a Special Evaluation may take place.

For example, it may be as a result of a complaint or appeal that is found to be valid, made by a person or committee that was not involved in the matter that is the subject of the appeal. In all cases where an appeal or complaint is upheld, a Verification Agency must conduct a root cause analysis to ascertain how and why such an error occurred. Corrective and preventative action must be implemented to resolve such an error, so it does not re-occur.

### Re-assessment

An organisation can apply for a re-assessment by requesting their Verification Agency to consider further evidence that was previously not provided during the B-BBEE Audit process, or if new information is discovered which could influence an overall B-BBEE score outcome. More often than not, this happens when a new ownership structure is implemented, one that will have a positive impact on an organisation's overall B-BBEE score.

## What is the status of the original B-BBEE Certificate following a re-issue?

When a B-BBEE Certificate is re-issued following a Special Evaluation or Re-assessment, the lifespan of the original Certificate is not extended, put another way, the original expiry date remains valid.

A re-issued B-BBEE Certificate must reflect the date on which it was re-issued and must include the expiry date of the original Certificate. Some Verification Agencies highlight the date of the original issue, but this is not mandated; therefore, the format of re-issued certificates may differ from agency to agency. For example, the original B-BBEE Certificate was issued on 1<sup>st</sup> December 2019, expiry date 30<sup>th</sup> November 2020. Following a Special Evaluation, the B-BBEE Certificate is re-issued on 30<sup>th</sup> January 2020; however, the expiry date remains 30<sup>th</sup> November 2020.

A re-issued B-BBEE Certificate must link to the original one so it can be easily traced. Although the format of re-issuing a B-BBEE Certificate may differ from agency to agency, the reference to a re-issued B-BBEE Certificate should appear in the certificate number. For example:

- > The original B-BBEE Certificate number is - 1234 [followed by the date of issue].
- > Re-issued B-BBEE Certificate number referring to re-issue should reflect – 1234 REV1 [followed by date re-issue], otherwise R1-1234 [followed by the date of re-issue].

When a B-BBEE Certificate is re-issued, the original one is effectively withdrawn. If an organisation is unable to find a resolution with their chosen Verification Agency, the matter can be taken up with SANAS. It is highly recommended that organisations have one appointed person to manage the verification process. Critical areas of concern are inconsistencies in the application of the Code that is measured and their application during the audit process. There must be a post-mortem following a B-BBEE Audit.