

A Does Not Roll the dice TECHNICAL SIGNATORY



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Mariette van Wyk heads up the Technical Specialist Service Desk at the BEE Chamber and is a qualified Chartered Accountant. Following more than a decade in the verification space, she has a solid technical understanding of both the Codes of Good Practice and the B-BBEE Act. With her experience as a Technical Signatory, Mariette is well-versed in the SANAS verification requirements and is more than equipped to guide organisations through their B-BBEE Verification.

The last step to issuing a valid B-BBEE Verification Certificate (B-BBEE Certificate) is the process of a Technical Signatory (TS) signing it off. The role and responsibility of a TS are to confirm the evidence presented by an organisation through a Verification Analyst during a B-BBEE Verification. The responsibility lies with them to ensure that a B-BBEE Verification is indeed accurate and in line with the Code on which an organisation is measured.

A verification team consists of one or more Verification Analysts and a TS. During a B-BBEE Verification, an organisation rarely engages with the TS. The Verification Analysts are the face of a B-BBEE Verification, as they conduct site visits physically or remotely - as per the current SANAS provision - inspect evidence and conduct interviews. Verification Analysts are the client-facing representatives who address issues as they arise and ensure sufficient and appropriate evidence is presented to substantiate all B-BBEE claims made by an organisation.



Only a TS may sign off a B-BBEE Certificate. Each B-BBEE Rating Agency has one or more technical signatories who are ultimately responsible for the findings and verification data that are used to issue a B-BBEE Certificate.

The onus is on a TS to confirm that sufficient and appropriate evidence was accepted by the Verification Analyst and that all verification procedures have been adhered to during the B-BBEE Verification process.

A B-BBEE Certificate is not valid unless a qualified TS has signed it off. Such a person's name appears on a B-BBEE Rating Agency's Scope of Accreditation which features on the SANAS website¹.

What is the role of a TS on a B-BBEE Verification Team?

Following the confirmation of an organisation's verification date, the TS allocated to that specific verification team reviews its B-BBEE verification file. The TS role is to assess and interpret data, then analyse samples provided by a Verification Analyst during the verification process, based on the Code on which an organisation is measured. They are then either comfortable with the Verification Analyst's findings and issue a B-BBEE Certificate; otherwise they request further evidence to substantiate claims to ensure alignment with the Code on which an organisation is measured.

It is the responsibility of a TS to ensure that Verification Analysts follow all procedures in line with the Verification Manual published by the Department of Trade Industry & Competition and the R47-03 published by SANAS. The verification team must conduct a B-BBEE Verification in line with the Verification Methodology of the B-BBEE Rating Agency they represent. Only once a TS is satisfied that the score achieved by an organisation is fairly represented, based on sufficient and appropriate supporting evidence, will they sign off on a B-BBEE Certificate.

What qualifies a person to be a TS?

Not every person employed at a B-BBEE Rating Agency qualifies to be a TS. A person undertaking the role must not only be declared competent by the B-BBEE Rating Agency they represent, but must have completed the B-BBEE Management Development Programme through UNISA or Wits.

SANAS assess a TS, whereby they confirm the competence of the individual. A TS must be fully versed on all sets of Codes for which the B-BBEE Rating Agency they represent is accredited to perform. Notably, a proficient TS will be versed in and align with the policies and procedures of the B-BBEE Rating Agency they represent, as well as the SANAS requirements relating to accreditation and compliance. Only then will a person be acknowledged as a TS.

What are the core roles and responsibilities of a TS within the structure of a B-BBEE Rating Agency?

- > Compliance with SANAS accreditation requirements;
- > Compliance with the B-BBEE Act, Verification Manual and relevant Codes or Sector Code;
- > Compliance with the internal policies and procedures approved by the B-BBEE Rating Agency they represent;
- > Sign and issue B-BBEE Certificates;
- > Quality control of B-BBEE verification files; and
- > Internal training of Verification Analysts.

What are the consequences if a TS is not recognised as a competent person?

Since the first publication of the Codes of Good Practice in 2007, there have been many schemes intended to by-pass the B-BBEE Verification process by competent teams. One such scheme includes the signing off of a B-BBEE Certificate by a person that is not a TS.

An example: for years, a fake TS named 'Simon du Toit' has presented himself as a TS at a B-BBEE Rating Agency in good standing in the B-BBEE space. However, he was never employed at that agency, and there is no record of him completing the B-BBEE Management Development Programme through UNISA or Wits.

The consequence for organisations that have a B-BBEE Certificate signed off by the elusive 'Simon du Toit', or others like him, is that they are trading with an invalid B-BBEE Certificate, as it is fake. Subsequently, such fake B-BBEE Certificates mean that any procurement spend based on that certificate may not be accepted as a claim.

Organisations must refer to the scope of accreditation on the SANAS website to ensure that the TS who signed their certificate represents the B-BBEE Rating Agency they are paying to perform a B-BBEE Verification.

What are the risk areas for a TS?

- > If a client purposely claims when they are aware the evidence is not credible, but the Verification Analyst does not sample this evidence.
- > Discovering Fronting Practices during a B-BBEE Verification, as a TS has an obligation to report such indiscretions to the B-BBEE Commission.
- > If SANAS, during its annual audit, picks up an issue with a sample used in a specific element.
- > Discovering that a person representing the B-BBEE Rating Agency did not disclose a prior working relationship with a client within the restraint period.

- > Suppose that an initiative has been incorrectly accepted as valid by both the Verification Analyst and TS. In this case, there is a possibility that a B-BBEE Rating Agency would have to revert to all B-BBEE Certificates issued where the B-BBEE Rating Agency applied that specific principle or interpretation. The implications of this are far-reaching, as all such B-BBEE Certificates issued under that specific principle or interpretation would have to be updated and reissued.

How did amendments to conducting a B-BBEE Verification during 2020 impact the B-BBEE Verification landscape and the role of a TS?

Amendments	Challenges	The Rationale
<p>SANAS made a temporary allowance for remote B-BBEE Verifications. Doing this enabled B-BBEE Rating Agencies to continue B-BBEE Verifications in line with COVID-19 restrictions.</p> <p>SANAS evaluates the continuation of remote B-BBEE Verifications on a month-to-month basis.</p>	<p>For many organisations, a remote B-BBEE Verification meant re-evaluating their data security policies and procedures. In many cases, this meant upgrading their system to secure the safe transferring of soft copy supporting documents.</p> <p>B-BBEE Rating Agencies similarly had to either develop or upgrade their data security to conduct remote B-BBEE Verifications in line with data security policies and procedures.</p>	<p>As the Disaster Management Act made no allowances for B-BBEE, a provision for remote B-BBEE Verifications was made so that B-BBEE Rating Agencies could continue conducting B-BBEE Verifications and the issuing of B-BBEE Certificates.</p> <p>The allowance was broadly welcomed by B-BBEE Rating Agencies and organisations alike.</p>
<p>The R47-03, which came into effect on 7th October 2020, prohibits commissions between B-BBEE Consultants and B-BBEE Rating Agencies. The amendments further compel organisations to pay their B-BBEE Rating Agency directly and not through a third party.</p>	<p>Prohibiting commission payments changed the historic landscape of how many B-BBEE Rating Agencies gain and retain business.</p> <p>B-BBEE Rating Agencies have had to evaluate their sales and marketing strategies to gain and retain business independently.</p>	<p>The objective of this amendment was to increase the impartiality of B-BBEE Rating Agencies when conducting B-BBEE Verifications. It further ensures that the B-BBEE Rating Agency's judgement is not skewed at any point during the B-BBEE Verification process.</p>
<p>The R47-03 further prohibits a B-BBEE Consultant and a person representing a B-BBEE Rating Agency from interacting during a B-BBEE Verification. In other words, the person responsible for representing an organisation must take the lead on all aspects of the B-BBEE Verification directly with the B-BBEE Rating Agency. (See page 12 that outlines a Special Power of Attorney in terms of a B-BBEE Verification).</p>	<p>B-BBEE Consultants are reluctant to relinquish their role as intermediaries during a B-BBEE Verification.</p> <p>Generally, organisations are not aware that they must interact solely with the B-BBEE Rating Agency and not through their B-BBEE Consultant.</p>	<p>The separation of roles allows for accountability by an organisation conducting their B-BBEE Verification. Notwithstanding the above, organisations can feel secure that the B-BBEE Certificate issued is a true reflection of the evidence presented during a B-BBEE Verification.</p>
<p>The R47-03 states that a B-BBEE Rating Agency has a four-year restraint on any potential or current client where one of their employees previously worked on an organisation's B-BBEE Verification or provided consulting services. Before this amendment was published, the restraint period was two years.</p>	<p>B-BBEE Rating Agencies must extend the mechanisms in place for an additional two years to investigate which of their clients and employees have previously worked on an organisation's B-BBEE Verification or provided them with consulting services.</p>	<p>This amendment was critical to managing the risk of conflict of interest and impartiality.</p>

An example: A TS or Verification Analyst is employed at Agency 1 and participated in the B-BBEE Verification of ABC Traders. They change their job, therefore are employed at Agency 2. After one-year, ABC Traders engages with Agency 2 to conduct its B-BBEE Verification, thus moving its B-BBEE Verification from Agency 1 to Agency 2. In terms of this amendment, Agency 2 must turn down this offer of work from ABC Traders until the four-year restraint ends.

<p>The Government allowed a holiday on the Skills Development Levy (SDL) to support organisations during the lockdown period.</p>	<p>Calculating and validating the leviable amount.</p>	<p>The SDL holiday was implemented to provide relief to organisations that needed to furlough employees due to lockdown restrictions.</p>
<p>SANAS issued a clear step-by-step methodology to calculate Enterprise & Supplier Development and Socio-Economic Development targets. These are applicable whether an organisation makes a profit or loss, which is less than a quarter of the industry norm. However, one-third applies to the Construction Sector Code.</p>	<p>If an organisation is not aware of the changed methodology and calculates its targets on the outdated formula, the outcome will reflect differently to that of the B-BBEE Ratings Agency.</p> <p>The consequence may be a lengthy appeal process and challenges as to why the B-BBEE Rating Agency applied the amended SANAS methodology rather than theirs.</p>	<p>The updated methodology provides consistency of application of legislation across the B-BBEE industry.</p>
<p>Protection of Personal Information Act (PoPI)</p>	<p>Obtaining information and supporting documents from an organisation that has already incorporated PoPI.</p>	
<p>Interpretations</p>	<p>Organisations not referring to the correct source of reference when challenging interpretations (see page 10).</p>	

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What factors must be taken into account when choosing a B-BBEE Rating Agency?

When sourcing the services of a B-BBEE Rating Agency, do due diligence. Choose a B-BBEE Rating Agency that has the experience and solid references within the relevant sector. An organisation is within its rights to request versed and experienced Verification Analysts and request a Curriculum Vitae of the Verification Team members allocated to their B-BBEE Verification. In line with the R47-03, it is imperative during the vetting process to confirm that the agency or any employee has not provided any advisory services in the previous four years.

Source of Reference:
<https://www.sanas.co.za/Pages/index.aspx>

An organisation's B-BBEE Verification file must be easy for a Verification Analyst and a TS to navigate. Tips for ensuring a smooth B-BBEE Verification include, but are not limited to:

- > Do not lump claims together, for example:
 - o Skills Development – refrain from combining total costs relating to one intervention; file evidence separately in terms of course fees, accommodation and travel.
 - o Enterprise & Supplier Development – refrain from combining claims such as discounted rent, discounts on services rendered, grant contributions and loans.

The recognition and evidence requirements for each of these claims must be categorised individually and kept separately.

- > Do not claim for unsubstantiated initiatives.
- > Collect records and ensure that record-keeping is done consistently throughout the year.
- > Have a good understanding of the B-BBEE Act and relevant Code, as well as what evidence substantiates the various claims.
- > Produce evidence to back up claims. It is better to do this whilst implementing the initiative for a claim rather than collating this during a B-BBEE Verification.
- > Obtain the most recent B-BBEE Certificate or Affidavit for all suppliers before the verification date.
- > Do not include unnecessary documents in the B-BBEE verification file.
 - o Payment requisitions are not acceptable evidence as proof of payment. They should not be included in the B-BBEE verification file unless the requisition is a reconciliation between the invoice and proof of payment.
 - o There is no need to submit Skills Development attendance registers for the full year if a certificate of attendance was issued.
- > All evidence must be clearly indexed.
- > All documents must be filed per element, then broken down per claim;
- > Ensure the procurement data accounts for the inclusion and exclusion principles that differ from those contained in the IFRS financial standards.
- > Clearly label and categorise soft copy evidence for easy reference purposes. Using Skills Development as an example, include the Beneficiary's name, the training initiative and, where possible, the supplier used.
 - o "K_Nkosi_Health_&_Safety_training_Invoice XXX"
 - o If evidence for one claim is combined in a single evidence pack: "K_Nkosi_Health_&_Safety_training_-_Certified_ID_EEA1_Dr_confirmation_of_disability_invoice_attendance_register_proof_of_payment."
- > If including one Beneficiary in both a Management Control and Skills Development claim, have a copy of their certified identity document or card and EEA1s under both sections.
- > Schedule timeslots per element for engaging with the Verification Analyst.
- > Schedule timeslots with relevant individuals for interviews. Ensure that Beneficiaries have the infrastructure to participate in an interview. Be clear that the interviews are to verify a B-BBEE claim and that no preparation is necessary.
- > Ensure there is a copy of the verification schedule and/or plan before the date of verification.
- > Conduct a post-mortem following a B-BBEE Verification, which will assist with identifying shortfalls.

