

THE R47-03

INTENDS TO INSTIL CONFIDENCE IN THE B-BBEE VERIFICATION PROCESS



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Since 2016, Yolanda du Plessis has been the General Manager at Authentic Rating Solutions and holds an Honours Degree in Brand Leadership. Her expertise for almost two decades has been in the field of brand management across a broad spectrum of sectors. In her current capacity, she is responsible for implementing and managing processes in line with SANAS requirements that have led to the solid reputation that Authentic Rating Solutions holds today, as one of South Africa's leading verification agencies.



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Mariette van Wyk heads up the Technical Compliance 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 and The B-BBEE Act. With her experience as a Technical Signatory, Mariette is well versed on the SANAS Verification requirements and is more than equipped to guide organisations through their B-BBEE Verification.

The SANAS R47-03 replaces the R47-02 document. It is the blueprint for how SANAS accredits a B-BBEE Rating Agency on behalf of the Department of Trade, Industry and Competition (the dtic). It essentially clarifies a code of conduct for B-BBEE Rating Agencies. It outlines the policies and procedures necessary to perform their services in line with the SANAS accreditation requirements.

These amendments became effective on 7th October 2020. Effectively, the objective of this document in its entirety is to outline how SANAS expects a B-BBEE Rating Agency to conduct business. The R47-03 applies to B-BBEE Rating Agencies operating in the B-BBEE space. Although organisations should be aware of the expectations contained in this document, their focus must be on the Act and the Codes.

These amendments clearly close loopholes in the system so that the result is acceptance of each B-BBEE Verification with confidence by the clients of the clients of B-BBEE Rating Agencies. The amendments will impact the earning potential of many operating in the B-BBEE Sector, as they clearly separate the roles and the rights of intervention between B-BBEE Rating Agencies, B-BBEE Consultants and related or third parties. The significant amendments in the R47-03 document include:

- > The amendment to the definition of a 'Consultancy' clearly separates the role of a B-BBEE Rating Agency from that of a B-BBEE Consultant as it clarifies what services are considered consulting services. Both Scenario Planning and conducting a Gap Analysis, that were once an exclusion from this definition, become an inclusion. Consequently, any service provider that performs Scenario Planning and/or a Gap Analysis for their client will be doing so in the capacity of a Consultant. Therefore, such a service provider will not be able to provide B-BBEE Verification services to that same client for a period of four years.
- > The definition of a 'related party' is broader in an attempt to remove the risk of conflict of interest. The amendment forbids compensation for client referrals between B-BBEE Rating Agencies and B-BBEE Consultants.
- > It introduces the criterion as to what constitutes Ethical and Professional Behaviour for a B-BBEE Rating Agency and its employees.
- > All invoices for a B-BBEE Verification must be issued by and paid directly to a B-BBEE Rating Agency; no related or third party may receive indirect payment for a B-BBEE Verification or pay on the money. It is clear that the agreement for a B-BBEE Verification is between a B-BBEE Rating Agency and its client. Furthermore, a B-BBEE Rating Agency and its client must interact and communicate directly with one another and not utilise a third party representing a client.

- > A four year exclusion period is being introduced, whereby a B-BBEE Rating Agency may not conduct a B-BBEE Verification for a client if they or any of their employees previously consulted for or provided any other services, acted in a managerial capacity or held equity. To manage this, B-BBEE Rating Agencies must record all organisations serviced by its employees who entered the business from a consulting perspective, to ensure that a current employee did not service their clients over a period of four years outside their employment. The exclusion applies to all occupational levels.
- > A B-BBEE Rating Agency or any related party may not in any way benefit from their client's B-BBEE Scorecard as it creates conflicts of interest, for example, in the case of an Enterprise Development Beneficiary. However, this does not apply to the Procurement Scorecard under Enterprise and Supplier Development, as that is only a direct commercial transaction for the cost of the rating.
- > The amendments provide additional guidelines on information that must be included on the face of a B-BBEE Certificate for it to be valid. This inclusion will aid national research on the trends and rate of transformation in South Africa.
- > The R47-03 introduces the process for certificate re-evaluations under the Special Evaluations section.

The amendments contained in the R47-03 intend to mitigate the risk of any party influencing the outcome of a B-BBEE Verification. It further keeps the focus of B-BBEE Rating Agencies on responsibly verifying all evidence. Over the past couple of years, there have been B-BBEE Rating Agencies and others operating in the B-BBEE arena who have been publically identified for participating in Fronting Practices to the point where they had to defend their stance in the mainstream media. One must bear in mind that intervention by related or third parties could result in Fronting Practices without the knowledge of their client. If this is the case, whether a client is aware that their evidence has been manipulated or not, they are the ones that will be held accountable by the B-BBEE Commission. Hence, limiting those involved in a B-BBEE Verification in no small measure eliminates such a risk.

In short, for a B-BBEE Rating Agency to conform with the amendments, it will have to change internal policies and procedures to align with the additional R47-03 requirements. Although the amendments do limit the interaction between B-BBEE Rating Agencies and other parties, it does not entirely remove such intervention. For example, it does not mean a B-BBEE Consultant or a related or third party will not be on site during a B-BBEE Verification or that there will not be correspondence shared relating to enquiries or requests shared.

Nevertheless, the amendments do mean that the client will be the point of reference when resolving matters and will remain accountable for the evidence presented during a B-BBEE Verification. Such accountability necessitates a new level of internal competence in organisations to ensure they are aware of and fully understand the implications involved in presenting evidence and the subsequent risk to their employees that feed the B-BBEE information chain.

As organisations are ultimately responsible for the results featuring on their B-BBEE Scorecard, it is essential that 'Knowing People' or those that feed into a B-BBEE Strategy are aware of the expectations outlined in the R47-03. SANAS acts on behalf of the dtic in accrediting B-BBEE Rating Agencies. B-BBEE Rating Agencies may not issue B-BBEE Certificates on any Code without accreditation from SANAS. Each Code or Sector Code requires a separate application and assessment for accreditation.

The principles outlined in the R47-03 are fundamental, as opposed to prescriptive, which means that they do not provide a solution for every situation that reveals itself. Hence the principles outlined must be applied as a guide for ethical decisions when a case reveals itself. Where this is an interpretive issue, all parties must defer to the B-BBEE Commission, which is the only office with the power to provide interpretation on B-BBEE legislation. The overall aim of verifying is to provide all parties with the confidence that they can rely on the results of a B-BBEE Verification. Therefore, the validity of a B-BBEE Certificate presented is received based on trust by:

- > Organisations that are the clients of the B-BBEE Rating Agencies;
- > The customers of the B-BBEE Verified organisation;
- > Government authorities;
- > Non-government authorities;
- > Consumers and members of the public; and
- > Public entities.

The guiding principles that instil confidence that a B-BBEE Certificate is indeed accurate with no conflict of interest include impartiality, competence, responsibility, confidentiality, openness, resolution of any complaints or appeals submitted as part of a verification process, as well as ethical and professional behaviour.

The R47-03 amends definitions of role players in the B-BBEE Arena:

'Consultancy' generally referred to as B-BBEE Consultant.

- > 'Consultancy' means the provision of any service that assists an organisation in implementing a B-BBEE Strategy or any element of their scorecard. These services include the implementation thereof without limitation to Ownership, Management Control, Skills Development, Enterprise and Supplier Development and Socio-Economic Development; otherwise any element prescribed in terms of a Sector Code. With reference to the avoidance of conflicts of interest, any service of a consulting body or consultancy performed by any personnel of a B-BBEE Rating Agency that has provided a service to an organisation, and the same organisation is verified by a B-BBEE Rating Agency, would be considered a contravention of the requirements of this document. Consultancy includes, but is not limited to, specific solutions and then assisting an organisation with implementing the proposed solutions.

Examples of the services a 'consultant' can provide include, but are not limited to:

- > Coaching or facilitating the B-BBEE process on behalf of an organisation towards the development and implementation of activities leading to B-BBEE compliance;
- > Preparing or producing manuals, handbooks or procedures;
- > Participating in the decision-making process regarding the management system;
- > Providing specific advice or scenarios for developing and implementing a management system in preparation for verification; and
- > Conducting a Scenario Plan or a Gap Analysis.

The amendment to the definition of 'consultancy' limits the services a B-BBEE Rating Agency can offer its clients. As we advance only a 'consultant', otherwise known as a B-BBEE Consultant, can provide a Gap Analysis or conduct a Scenario Plan. If a B-BBEE Rating Agency provides consulting services to a client, it may not perform the B-BBEE Verification for the same client. In line with the amendments, a B-BBEE Rating Agency may render the following services to its clients.

- > Verification, including information and planning meetings, the examination of documents, as well as following up of non-conformities;

- > Arrange training and participate in sessions as a trainer, which is not considered a consultancy service, providing such training relates to the B-BBEE process. However, training must relate to generic information and advice that is freely available in the public domain. For example, a trainer may not offer specific solutions or provide guidelines relating to compliance;
- > Making available or publishing on request information as to the basis of a B-BBEE Rating Agency's interpretation of the requirements of the Verification Standard;
- > Activities before a B-BBEE Verification that aim to determine the readiness of an organisation for a B-BBEE Verification. However, such actions should not result in recommendations or advice;
- > Adding value during verification visits by identifying opportunities for improvement, as they become evident during the B-BBEE Verification, however, without recommending specific solutions.

A 'related party' refers to someone with a vested interest in a B-BBEE Rating Agency.

- > A 'related party' is a person linked to a B-BBEE Rating Agency through common ownership in terms of a director, management, a contractual arrangement or common elements in the name, otherwise an informal understanding. Such limitations extend to, however, are not limited to, a special interest, concern, stake, investment, agenda, stakeholder, supporter, skills development partner, third party facilitator of Enterprise & Supplier Development, relationships or agreements in the referral of clients. A related party has a vested interest in the outcome of an assessment or has the potential to influence the result of a B-BBEE Verification.

The focus of this definition is on integrity and impartiality. The actual presence of objectivity is impartiality. Objectivity means that there are no conflicts of interest or that such is resolved, so they do not influence the subsequent activities of a B-BBEE Rating Agency.

Impartiality, as well as being perceived to be impartial, is necessary for a B-BBEE Rating Agency to deliver a B-BBEE Certificate that instils confidence. A B-BBEE Rating Agency must demonstrate that all its decisions are objective and based on evidence without any outside influence.

Known threats to impartiality include, but are not limited to:

- > Any party that seeks personal gain, particularly financial gain, hence puts their interest first.
- > A person that has consulted for an organisation who involves themselves in the B-BBEE Verification process in an attempt to steer the outcome. It is for this reason that a period of four years replaces the previous two years between providing consulting and verification services to the same client.
- > Familiarity, whereby a client is over-reliant or overtly trusting of a related or third party.
- > Intimidation whereby a person is openly or secretly coerced into making a decision not aligned with the R47-03 requirements.

As a B-BBEE Rating Agency needs evidence to conduct a verification, they will have access to privileged or sensitive information that must remain confidential. It is, therefore, imperative that the disclosure and distribution of results from a B-BBEE Verification happen without compromising the confidentiality of an organisation's information or intellectual capital.

Organisations, following their verification, expect to have their complaints addressed and appeals investigated. If a complaint or appeal is valid, remedial action must apply to resolve the issue. If this is the case, B-BBEE Rating Agencies must act within the relevant laws and regulations applicable. Those conducting a B-BBEE Verification must act with integrity so as not to discredit the profession. A person representing a B-BBEE Rating Agency must:

- > Act in good faith, with due care and diligence, when conducting a B-BBEE Verification;
- > Avoid collusive or anti-competitive behaviour;
- > Promote a culture of fair and ethical behaviour, without prejudice against any party;
- > Refrain from debate and discussion that is disrespectful or threatening, either mentally or physically, as well as refrain from using any unprofessional tone which is offensive to other participants, hindering or damaging SANAS or the overall process of achieving consensus;
- > Treat all persons with respect and fairness and not offer or appear to provide preferential treatment to any person or group;
- > Refrain from disseminating false or misleading information or from withholding information necessary for a full, fair, and complete consideration of the issues;

- > Not harass, threaten or coerce any participant to persuade or sway votes. Such behaviour does not preclude professional, respectful debate and exchange of views that contains information and/or presents perspectives intended to persuade other participants to lend their support or opposition to issues, to name but a few.

Essentially, a B-BBEE Rating Agency must strike an appropriate balance between the principles of openness and confidentiality, including a speedy resolution of complaints, if and when necessary, to demonstrate integrity and credibility.

The R47-03 provides clarity about what information and results thereof should appear on a B-BBEE Certificate. Subsequently, the amendments require additional information that must appear on B-BBEE Certificates issued from 7th October 2020.

Each issued B-BBEE Certificate must feature a B-BBEE Rating Agency's unique accreditation number and include the SANAS accreditation symbol. In terms of the amendments contained in the R47-03 document, a B-BBEE Certificate must contain the following additional information from the date the requirements became effective:

- > The score per element including the totals for each;
- > 'Black' Ownership percentage;
- > 'Black' Woman Ownership percentage;
- > 'Black' Designated Group percentage;
- > 'Black' Youth percentage;
- > 'Black' Persons with disabilities percentage;
- > 'Black' Unemployed People percentage;
- > 'Black' People living in rural areas percentage;
- > 'Black' Military Veterans percentage;
- > Modified Flow-Through application derived from the Ownership percentages, yes or no;
- > Application of Exclusion Principle, yes or no;
- > Application of Discounting Principle, yes or no;
- > Empowering Supplier status, yes or no;
- > The financial year-end applied;
- > Name and signature of Technical Signatory;
- > Any amendments to the certificate must be clearly documented;
- > A Consolidated Certificate must indicate such. It must refer to an attachment that incorporates the names, registration and VAT numbers of organisations included in the measurement;

- > In terms of the reflection of the level and points on the B-BBEE Certificate, the following is applicable:
 - Participated in YES Initiative, yes or no;
 - Achieved YES Target and 2.5% Absorption, yes or no;
 - Achieved 1.5 x YES Target and 5% Absorption, yes or no; and
 - Achieved Double YES Target and 5% Absorption, yes or no.

SANAS refers to B-BBEE Certificates, but does not refer to some requirements regarding hard or soft copies. They only refer to the information provided and items displayed on the certificate. So the same rules would apply for both hard and soft copy certificates. Point (l) to (cc) in the list of information required on the B-BBEE Certificate was not necessary for version 2 of the R47. Although some B-BBEE Rating Agencies did display this information on their certificates, it was not necessarily a requirement up to now.

A B-BBEE Rating Agency shall exercise proper control of Ownership indicated on the B-BBEE Certificate. Furthermore, it shall take suitable action to identify and deal with incorrect references to an organisation's B-BBEE verified status.

In instances where it is necessary to correct or withdraw a B-BBEE Certificate, a B-BBEE Rating Agency shall ensure that its client conforms with its procedures that outline the withdrawal of a B-BBEE Certificate and ensure that the re-issued one is used. Such a system would include, but not be limited to:

- > Notifying an organisation, otherwise its client;
- > Notifying SANAS;
- > Uploading the information on a B-BBEE Rating Agency's website; and
- > Informing all relevant stakeholders.

The R47-03 introduces an outline as to how a B-BBEE Rating Agency will conduct a re-evaluation of a B-BBEE Verification. The re-issuing of a B-BBEE Certificate stems from material changes following a B-BBEE Verification that would impact the outcome of an organisation's score. If there are material changes to the overall score or status level, a B-BBEE Rating Agency must retract the initial B-BBEE Certificate and issue a new one. The issue date of the certificate will reflect the re-issue date; however, the expiry date on the original certificate will not change. A re-issued B-BBEE Certificate will be valid for the Measurement Period of the initial B-BBEE Certificate.

Source of Reference

B-BBEE Codes of Good Practice as amended on the 11th October 2013 (gazette number 36928), B-BBEE Act number 46 of 2013, a Sector Code of Good Practice issued in terms of section 9(1) of the B-BBEE Act as and when amended, a Practice Note or Regulations issued in terms of Section 14 of the B-BBEE Act, Standard ISO/IEC 17011:2017, PUB10039 and SANAS F147.