

# HOW TO CONFIRM PARTICIPANTS, BENEFICIARIES & AFFIDAVIT DEONENTS ARE 'BLACK' PEOPLE AS DEFINED

By: Stella Nolan

As organisations conduct a post-mortem on their B-BBEE Verification, the desired outcome would be a seamless B-BBEE Verification process and a scorecard that reflects a carefully crafted B-BBEE Strategy. One that was implemented meeting the criteria outlined in the Codes, whereby the Participants or Beneficiaries have gained from the intervention.

In reality, many organisations, upon reflection on their B-BBEE Strategy, identify shortfalls. A gaping shortfall for many is that one or more Participants, Beneficiaries or Affidavit Deponents are not counted in a B-BBEE Verification. The reason is that the evidence submitted to verify them does not validate them as 'Black' People as defined. Without qualifying as a 'Black' Person as defined in terms of the B-BBEE Act means they do not qualify for redress or, put another way, they may not benefit from B-BBEE Policy.

Such a shortfall can have a negative impact on all elements of an organisation's B-BBEE Scorecard. The reasons why a Participant, Beneficiary or an Affidavit Deponent is not counted at a B-BBEE Verification are due to:

- ① the identity number presented being a fake;
- ② the identity number presented having been manipulated;
- ③ their not having South African citizenship; or
- ④ their not meeting the birth, descent or nationalisation criteria laid out in the definition.

Unfortunately, more often than not, identity discrepancies only come to light at the time of a B-BBEE Verification when a Verification Analyst evaluates and validates evidence as to whether a person qualifies as a 'Black' Person as defined. B-BBEE Rating Agencies, when conducting a B-BBEE Verification, must adhere to requirements in the 2008 Verification Manual, the Codes of Good Practice, the B-BBEE Act and the SANAS R47-03 document. The first point of reference for a Verification Analyst in validating a Participant, Beneficiary or Affidavit Deponent is a South African identity number, in the form of a certified copy of their identity document. Evidence in the form of a certified South African identity is used under the following circumstances;

- > The process for onboarding Skills Development Beneficiaries;
- > Management Control data;
- > Criteria for onboarding suppliers to measure against Preferential Procurement targets;
- > Agreements with Enterprise Development and Supplier Development Beneficiaries;
- > Accepting Affidavits;
- > Ownership credentials of suppliers;
- > 'YES' Employees;
- > Status of Ownership to validate structures; and
- > Supporting Socio-economic Development Beneficiaries whereby the requirement is that at least 75% of Beneficiaries must meet the definition of 'Black' People.

The first port of call for an organisation is to ensure that the identity number presented is authentic. Therefore, understanding the sequence and formation of a South African identity number will enable organisations to identify red-flag issues on receipt of the identity document, rather than at their B-BBEE Verification.

## What is the sequence and formation of a South African identity number?

The South African identity number reveals a lot about a person and was developed using the Luhn Algorithm. Each of the 13 digits was designed with a purpose, as they collectively provide a formula that reveals whether a South African identity number is authentic or not.

For example, two checksum identity numbers feature in this article, one describing a man and the other a woman; however, only one is a valid identity number. The objective is to demonstrate how the Luhn Algorithm validates one and red-flags the other as invalid. The YYMMDDSSSSCAZ format decodes the 13-digit identity number as follows:

Example 1: 8 8 0 1 2 3 3 1 1 1 0 8 8  
 Example 2: 8 8 0 1 2 3 5 1 1 1 0 8 8

Y Y M M D D S S S S C A Z

- The first six digits are based on the year, month and date of birth.  
 Example 1: 23rd January 1988  
 Example 2: 23rd January 1988
- The next four digits refer to gender.  
 Women 0000 - 4999  
 Men 5000 - 9999  
 Example 1: woman  
 Example 2: man
- Determines SA citizenship  
 0 - South African Citizen  
 1 - non South African Citizen  
 Example 1: South African  
 Example 2: South African
- Race Group Classification. This digit is no longer used.
- Based on the Luhn Algorithm, this digit is used to confirm the validity of a South African Identity Number

### What would constitute red flag issues in a South African identity number?

A red flag issue would be a person presenting themselves as a man [SSSS] when the numbering sequence identifies a woman. Another example is the number identifying citizenship [C], which, if it reflects a [1], indicates that the person is not a citizen but a permanent resident. Otherwise, a person aiming to benefit from B-BBEE Policy may manipulate the number [1] reflecting non-citizenship to a [0], indicating citizenship.

### How can I validate that a South African identity number is authentic?

The Luhn Algorithm contains five steps for authenticating a South African identity number. The two illustrations provided go through the five authentication steps using one valid and one invalid identification number. In the invalid example, the gender identifier of the person was manipulated.



### Valid Identity Number

1. Identity Number	8 8 0 1 2 3 5 1 1 1 0 8 8
2. Working from the right digit, double every second digit	16 2 6 2 2 16
3. Add together the digits in any two-digit number from step 2	7 2 6 2 2 7
4. Total step 2 and 3	8 7 0 2 2 6 5 2 1 2 0 7 8 Sum: $8+7+0+2+2+6+5+2+1+2+0+7+8 = 50$
5. Ascertain whether the total is divisible by 10 without a remainder, i.e. 50 divided by 10 = 5	

### Invalid Identity Number

1. Identity Number	8 8 0 1 2 3 3 1 1 1 0 8 8
2. Working from the right digit, double every second digit	16 2 6 2 2 16
3. Add together the digits in any two-digit number from step 2	7 2 6 2 2 7
4. Total step 2 and 3	8 7 0 2 2 6 3 2 1 2 0 7 8 Sum: $8+7+0+2+2+6+3+2+1+2+0+7+8 = 48$
5. Ascertain whether the total is divisible by 10 without a remainder, i.e. 48 divided by 10 = 4.8	

The result of the five steps for authenticating the identity numbers in the example, using the Luhn Algorithm, reveals the following:

Example 1	Example 2
Identifies a man born on 23rd January 1988 who is a South African citizen.	Identifies a woman born on 23rd January 1988 who is a South African citizen.
The total of the five-step authentication process is 5. This identity number is valid as the total is a single digit.	The total of the five-step authentication process is 4.8. This identity number is not authentic as the total has a remainder.

Upon confirming that a South African identity number is authentic, an organisation must confirm that the person aiming to benefit from B-BBEE Policy is 'Black' as defined and therefore qualifies.

### What is the definition of 'Black' People as defined?

The term 'Black' People as defined in the B-BBEE Act means African, Coloured and Indian People:

- (a) who are citizens of the Republic of South Africa by birth or descent; or
- (b) who became citizens of the Republic of South Africa by naturalisation:
  - (i) before 27<sup>th</sup> April 1994; or
  - (ii) on or after 27<sup>th</sup> April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

## Do all South African citizens who are African, Coloured or Indian people qualify for redress or for benefits from B-BBEE Policy?

Not every person who is African, Coloured or Indian and who obtained South African citizenship based on their naturalisation status automatically qualifies to benefit from B-BBEE Policy. Hence they would be categorised as non-'Black' on a B-BBEE Scorecard.

Obtaining citizenship through naturalisation may result from meeting the requirements in the laws and regulations administered by the Department of Home Affairs. However, naturalisation in this manner does not automatically translate to a person qualifying as a person who can benefit from the B-BBEE policy.

For example, PERSON A who was either:

- > born outside of South Africa and naturalised after 27<sup>th</sup> April 1994; or
- > a non-citizen who married a South African citizen, then naturalised.

In both cases, PERSON A's identity number would identify them as a South African citizen. Although conferred with citizenship status as a result of meeting the naturalisation requirements expressed in the Department of Home Affairs regulations, this person does not qualify as a 'Black' Person as defined, therefore does not qualify to benefit from B-BBEE Policy. Hence they will be recognised as non-'Black' on a B-BBEE Scorecard.

For PERSON A to qualify as a person who can benefit from B-BBEE Policy, hence qualify as per the definition 'Black' People, PERSON A must track the citizenship status of their parentage. The Department of Home Affairs, responsible for the population register, can confirm whether the parents of PERSON A were South African citizens within the context of the B-BBEE Act. If they were, PERSON A would qualify to benefit from B-BBEE Policy and can therefore be counted as a 'Black' Person on a B-BBEE Scorecard.

## Do children who are born outside South Africa to South African citizens qualify as 'Black' People as defined?

If the South African parents of a child left South Africa and became citizens of another country, the child born would be a citizen by birth of the other country, therefore not retrospectively a South African citizen. Consequently, the child would qualify as non-'Black' on a B-BBEE Scorecard.

## Do children who are born to non-South African citizens in South Africa qualify as 'Black' People as defined?

If the parents were or are citizens of the other country, then a child born will hold the same citizenship as their parents, irrespective of where the child was born. Therefore this person would qualify as non-'Black' on a B-BBEE Scorecard.

## How do people confirm their right by birth or descent in order to qualify as 'Black' People as defined?

If the parents of a child were South African citizens in a way that meets the definition of a 'Black' Person as outlined in the amended B-BBEE Act, then a child born from those parents qualifies to benefit from B-BBEE Policy by descent.

The Department of Home Affairs is responsible for the population register. Therefore, it can determine whether a person qualifies to benefit from B-BBEE Policy.



## What evidence does a B-BBEE Rating Agency require from Participants, Beneficiaries or Affidavit Deponents?

To evaluate from a holistic perspective, apart from an Identity Document from Participants, Beneficiaries or Affidavit Deponents, the following non-exhaustive list of evidence will be required:

Ownership	<ul style="list-style-type: none"> <li>&gt; B-BBEE Certificate or Affidavit depending on criteria;</li> <li>&gt; Share register;</li> <li>&gt; Share certificate;</li> <li>&gt; Memorandum of Incorporation (MoI);</li> <li>&gt; Valuation;</li> <li>&gt; Shareholders agreement;</li> <li>&gt; Declaration of balance of outstanding acquisition debt; and</li> <li>&gt; CK2 in the case of a Close Corporation.</li> </ul>
Management Control & Skills Development	<ul style="list-style-type: none"> <li>&gt; Employment Equity Reports including acknowledgement of the submission;</li> <li>&gt; Payroll report or extract;</li> <li>&gt; COR39 form;</li> <li>&gt; Letterhead;</li> <li>&gt; Minutes of Board Meetings;</li> <li>&gt; EEA1 form;</li> <li>&gt; Approved Workplace Skills Plan, Annual Training Report and Pivotal Report including proof of submission;</li> <li>&gt; EMP201 form;</li> <li>&gt; EMPSA form;</li> <li>&gt; Where applicable, doctor's letter confirming employee disability status;</li> <li>&gt; Evidence of Skills Development overhead costs;</li> <li>&gt; The cost of internal training;</li> <li>&gt; Skills Development supplier invoices and proof of payment;</li> <li>&gt; Evidence of attendance at training interventions;</li> <li>&gt; Bursary Agreements;</li> <li>&gt; Evidence of salary costs for category B, C or D programmes;</li> <li>&gt; Evidence of qualification for categories B, C and D programmes; and</li> <li>&gt; If applicable, proof of absorption.</li> </ul>
Enterprise Development	<ul style="list-style-type: none"> <li>&gt; Signed Enterprise Development Contract;</li> <li>&gt; Proof of Valid B-BBEE Status;</li> <li>&gt; Proof of contribution to confirm that the cost has been incurred. However this may vary depending on the type of contribution made; and</li> <li>&gt; Acknowledgement of receipt of the contribution.</li> </ul>
Supplier Development	<ul style="list-style-type: none"> <li>&gt; Signed Supplier Development Agreement;</li> <li>&gt; Proof of valid B-BBEE Status;</li> <li>&gt; Proof of contribution to confirm that the cost has been incurred. However this may vary depending on the type of contribution made; and</li> <li>&gt; Acknowledgement of receipt of the contribution.</li> </ul>
Preferential Procurement	<ul style="list-style-type: none"> <li>&gt; Proof of procurement of goods or services through an invoice.</li> </ul>
Socio-economic Development	<ul style="list-style-type: none"> <li>&gt; Acknowledgement of receipt of the contribution;</li> <li>&gt; Confirmation of contribution by a Competent Person; and</li> <li>&gt; Proof of valid B-BBEE Status.</li> </ul>

Content vetted by B-BBEE Commission and confirmed as accurate.

Source of reference:

<https://mybroadband.co.za/news/security/303812-what-your-south-african-id-number-means-and-what-it-reveals-about-you.html>

# CRITERIA FOR CHINESE PEOPLE QUALIFYING AS B-BBEE BENEFICIARIES



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Mariette van Wyk is a Technical Specialist 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 in the SANAS verification requirements and is more than equipped to guide organisations through their B-BBEE Verification.

On 18<sup>th</sup> June 2008, the Pretoria High Court of South Africa declared that Chinese People:

- > Fall within the ambit of the definition of 'Black' People as per section 1 of the Employment Equity Act 55 of 1998; and
- > Fall within the ambit of the definition of 'Black' People as per section 1 of the B-BBEE Act 53 of 2003<sup>2</sup>.

The ruling was brought to the court calendar by:

Applicants	Respondents
Chinese Association of South Africa;	The Minister of Labour;
Victor Chong; and	The Minister of Trade & Industry; and
Albert Peter Fung.	The Minister of Justice & Constitutional Development.

The landmark ruling awarded costs to the Applicants. The Pretoria High Court concluded that the descendants of mainland China, who arrived in South Africa before 1994, classified as a subgroup of Coloured People by the Apartheid regime, were eligible for redress. As a result, approximately 12,000 to 15,000 ethnic Chinese citizens who arrived in South Africa before 1994, amounting to between 3% and 5% of the total Chinese population in the country, qualify as B-BBEE Beneficiaries.

The ruling was the culmination of an eight-year struggle to obtain clarity from the government as to whether Chinese South Africans, who were previously classified as Coloured People during the Apartheid era, qualify for the benefits in terms of both Acts.

Although the two Acts did not expressly exclude Chinese South Africans, the fact that there was no reference by name led to confusion in the marketplace. The net result was that Chinese South Africans and organisations reporting statistics were never sure of their status.

In terms of the B-BBEE Act, 'Black' People is a generic term that refers to African, Coloured and Indian People who are either:

- (a) citizens of the Republic of South Africa by birth or descent; or
- (b) became citizens of the Republic of South Africa by naturalisation:
  - (i) before 27<sup>th</sup> April 1994; or
  - (ii) on or after 27<sup>th</sup> April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

Therefore, Chinese People are eligible for redress, providing they meet the criteria of 'Black' People as outlined in the B-BBEE Policy. Evidence to support a B-BBEE Verification of a Chinese Person as a B-BBEE Beneficiary must consider the circumstances of the claim.