

## B-BBEE – Ownership Introduction

Ownership has been one of the most complex elements of the B-BBEE codes and after several years, there is still a lot of confusion around what is allowed and what is not. It must be noted that the intention should always be transformation, and that ownership strategies should not be implemented without consulting a professional with the relevant expertise.

Before we look at the ownership scorecard, we need to understand the basic principles. Let's start with:

**Voting Rights** means a voting right attaching to an Equity Instrument owned by or held for a participant measured using the Flow through Principle or the Control Principle;

Therefore this is the right to a shareholder to participate in the voting process during shareholders meetings. In most cases this would be equal to the number of shares owned, however, these days care should be taken in the verification of ownership structures to ensure the number of votes used for calculation purposes is stated correctly.

**Exercisable Voting Right** means a voting right of a Participant that is not subject to any limit;

**Economic Interest** means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through and, where applicable, the Modified Flow Through Principles; This would be the return that the shareholder will earn, based on their investment. In the current state of our countries economy, there is a lot of companies that are not able to declare dividends. That does not mean that they do not have economic interest. However, the rules for the economic interest should be clearly stated in a shareholders agreement or a similar document.

**Net Value** means the percentage resulting from the formula in Annexe 100(C) of statement 100; **Net value** reflects the **value** of the equity held by black participants in the entity after deducting debt incurred by the black participants to fund their equity investment.

**Rights of Ownership** Is a collective term for the right to Economic Interest and the right to Exercisable Voting Rights;

There is different ways of owning or controlling a company, and it is important to understand the difference.

A **B-BBEE Owned Company** means a juristic person, having shareholding or similar members interest, that is B-BBEE controlled, in which Black participants enjoy a **right to Economic Interest that is at least 51%** of the total such rights measured using the Flow Through Principle;

A **B-BBEE Controlled Company** is different in that it means a juristic person, having shareholding or similar members interest, in which black participants enjoy a **right to Exercisable Voting Rights that is at least 51%** of the total such rights measured using the Flow Through Principle; Therefore all about the votes

**51%% Black Owned** means an Entity in which:

1. (a) Black people hold at least 51% of the exercisable voting rights as determined under Code series 100;
2. (b) black people hold at least 51% of the economic interest as determined under Code series 100; and
3. (c) has earned all the points for Net Value under statement 100;

If one of the 3 is not true it is not classified as a 51% black owned company. Currently smaller companies can do an affidavit confirming its B-BBEE status, however it is clear that a companies that signs these affidavits confirming they are 51% black owned, doesn't even know how to calculate the net value points. It should also be known that a company and its directors / shareholders can be taken to court, based on a signed affidavit, on which information is misstated.

**Black New Entrant:** means Black participants who hold rights of ownership in a Measured Entity and who, before holding the Equity Instrument in the Measured Entity, have not held equity instruments in any Entity which has a total value of more than R50,000,000.00 measured using a standard valuation method;

Now that we understand the basic principles of Ownership, lets look at the scorecard.

B-BBEE Elements & Indicators	Generic		QSE	
	Weighting	Targets	Weighting	Targets
<b>Ownership</b>	<b>25</b>		<b>25</b>	
Voting Rights (Black)	4	25% + 1 Vote	5	25% + 1 Vote
Voting Rights (Black Women)	2	10%	2	10%
Economic Interest (Black)	4	25%	5	25%
Economic Interest (Black Women)	2	10%	2	10%
Economic Interest (Designated Groups ect.) <ul style="list-style-type: none"> <li>• Employee Share Ownership Program</li> <li>• Broad-based Ownership Scheme</li> <li>• Black participants in Co-operatives</li> <li>• Designated Groups</li> </ul>	3	3%		
Economic Interest (Black New Entrants)	2	2%		
Economic Interest (Black New Entrants or Designated Groups ect)			3	2%
Net Value	8	Refer to C	8	Refer to C

The target for voting rights for both the Generic and QSE scorecards is 25% plus one vote. This doesn't mean that it is 26%. It is all about the number of votes issued. If a company issued 100 shares it would be 26 votes. If there is 1000 shares it would be 251 votes and so on.

Economic interest in the hands of black people is set at 25% for the Generic and QSE scorecard.

These two areas are the only areas on the scorecard, where modified flow through can be applied. All other areas on the ownership scorecard must apply the flow through principle.

Female voting rights as well as the economic interest has a target of 10%.

Economic interest for Designated group, Employee Share Ownership Programmes, Broad-Based Ownership Schemes and Co-operatives has a target of only 3% on the Generic Scorecard. Further to this, the Generic Scorecard has an additional target of 2% for Black New Entrants. The QSE Scorecard only requires 2% for black designated groups or Black New Entrants an Economic interest for black new entrants a target of 2%.

The last area on the scorecard is the net value. This is also the area that determines the compliance to the priority element requirements. There is 8 points available and 3.2 must be achieved in order to comply with the requirements. Failure to comply will result in a discounted level on the overall scorecard.

I mentioned Flow through and Modified Flow-Through Principle in the Voting Rights and Economic Interest of Black People. Flow through is the actual share percentage held in the hands of black natural persons. Modified flow-through is slightly different.

The modified flow-through principle applies where a company has a B-BBEE Owned or Controlled company in the ownership structure of the measured entity. In such a case were the black people have a flow-through level of 51%, once in structure, such entities can be treated as 100% black owned.