Taking the sting out of B-BBEE
by Anton de Wet

Broad-based black economic empowerment (B-BBEE) is a uniquely South African concept. It is a government initiative which is intended to right the wrongs of the past. Whether this can be done through legislation is debatable but this is what the government has decided to do, and trading freely in the new South African landscape requires compliance with this unique legislation.

As a dairy farmer, you (and perhaps generations of your family before you) have worked very hard to build an agri-business that generates an income for yourself and your farmworkers. In the process, you have also created a measure of wealth. To be informed now that you need to share this with others will naturally come as a shock. In this article, we want to explore some of the technical requirements that have the potential to take the inherent “sting” out of B-BBEE compliance.

This discussion is based on the Draft Amended AgriBEE Sector Code, which is expected to be published soon. We explore some of the practical factors that a dairy farmer could consider when planning for B-BBEE compliance.

Most farmers house all their farming operations, such as their maize, dairy and beef operations, in a single legal entity. This means that more than one “business” is actually being housed within this one legal entity whether it be a sole proprietorship, a trust, a close corporation or a private company. A popular practice among many companies in recent years is to do a corporate restructuring resulting in one or more of these “businesses” being housed in their own legal entity.

Turnover: < R10 million
Not all businesses are equally sensitive to B-BBEE pressure from their clients. Where the turnover is less than R10 million it is easier to identify B-BBEE partners that are interested in getting involved in the specific business. There is the additional benefit that such an entity has its own annual turnover which may qualify the business as an exempt micro enterprise (EME) qualifying for an automatic B-BBEE status. An EME is a business with an annual turnover of less than R10 million.

An EME that is majority white-owned qualifies for an automatic level 4 status and, once the Amended AgriBEE Sector Code has been published, an EME that is at least 51% black-owned will qualify for an automatic level 2 status. Under the Amended AgriBEE Sector Code, an EME will have to prove its status by means of an annual sworn affidavit issued by the farmer. An EME is then exempt from having to comply with any of the other B-BBEE requirements.

Turnover: R10 million to R50 million
For a business with an annual turnover of between R10 million and R50 million (in terms of the Draft Amended AgriBEE Sector Code), known as a qualifying small enterprise (QSE), there are two routes to becoming B-BBEE compliant.

The first route involves implementing a B-BBEE strategy that addresses all five of the QSE (qualifying small enterprise) scorecard elements, namely:

- equity ownership;
- management control;
- skills development;
- enterprise and supplier development; and
- socio-economic development.
These all have their own specific targets. To achieve a B-BBEE status level, all these elements must be addressed in each financial year. This is very burdensome in administrative terms, extremely expensive and often results in a poor B-BBEE status level. It is expected that very few QSEs will opt for this route.

The second option available to a QSE is to implement 51% black equity ownership and qualify for an automatic level 2 status. This exempts the business from the scorecard requirements and is the route that almost all QSEs are currently following. If such an equity transaction is properly structured, it can meet the expectations of all the parties without putting the business at risk.

**Turnover: > R50 million**
A business with an annual turnover of more than R50 million is subject to the five scorecard elements mentioned and an annual verification by an accredited agency that will issue a verification certificate valid for 12 months.

**B-BBEE doesn't have to be a “give-away”**
The thought of “giving away” a part of the business is one of the biggest concerns when it comes to implementing B-BBEE. This concern can be mitigated by having the transaction structured by a B-BBEE expert. Existing equity value can be ring-fenced for the benefit of the farmer to whom it belongs so that the B-BBEE partners only share in the future profits they help generate.

As is the case with any business, a successful dairy operation relies heavily on the day-to-day expertise of the farmer and the existing farmworkers. In most cases, these loyal workers are by far your best B-BBEE partners as they are already contributing to the success of the business. Structuring an equity (ownership) transaction with your farmworkers who are committed to continuing to make a meaningful contribution to the business can be a win-win situation for all. If the equity transaction results in the workers holding more than 51% of the dairy’s trading operations, the business will qualify for an automatic level 2 B-BBEE status once the amended legislation becomes effective.

The biggest “sting” in B-BBEE often concerns the existing assets owned by the farmer, such as his land, buildings and equipment. Does B-BBEE require these assets to be transformed as well? No. Many farmers hold these assets in separate legal entities such as trusts or property companies that rent these assets to the “trading business”. B-BBEE requires the transformation of the trading business, whether or not such business owns capital assets itself.

What is important is a genuine commitment to empowering the B-BBEE partners by means of a reasonable profit-sharing scheme, without putting at risk the business generating such empowerment.

**Does B-BBEE show a return on investment?**
Absolutely, if done the right way. Farmers and their staff have all the ingredients necessary for a highly successful B-BBEE strategy. The farmer possesses the expertise, capital and market share while the farmworkers are incentivised not only to continue contributing but to take their personal interest in the business to a whole new level. B-BBEE, if done the right way, has the potential to positively transform the business dynamics within a farming operation.

This increases both enthusiasm and productivity, a result that has already surprised many farmers, who don’t regret their decision to transform their agri-businesses. From a financial perspective, a good B-BBEE status provides a competitive advantage and keeps clients satisfied, which translates into increased revenue and equity growth for everyone involved.
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