the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng, 0002
Tel: +27 (12) 394 1535 Fax: +27 (12) 394 2535
Private Bag X84, Pretoria, Gauteng, 0001

Email: RamareM@beecommission.gov.za

B-BBEE COMMISSION
a member of the dti group

UKWAZISWA KOBUNIKAZI BABANTU ABAMNYAMA NGOKUTHENGISWA KWEMPAHLA, I-*EQUITY INSTRUMENTS*, KANYE NAMANYE AMABHIZINISI

1. Singobani?

1.1 I-*Broad-Based Black Economic Empowerment Commission*) isungulwe njengesikhungo esiphethwe wuMnyango Wezohwebo, Izimboni NezokuQhudelana Kwezohwebo ("**i-the dtic**") ngokwesigaba 13B soMthetho i-*Broad Based Black Economic Empowerment Act No. 53 of 2003* njengoba uchitshiyelwe kuMthetho i-*Broad-Based Black Economic Empowerment No. 46 of 2013* ("uMthetho we-B-BBEE"). Umsebenzi wayo ubandakanya ukukala ukuqaliswa koMthetho we-B-BBEE nokulwisana nezenzo zokungalandelwa kwezimiso zoMthetho we-B-BBEE.

2. Isitatimende 102 siquketheni?

2.1 Isitatimende 102 se-*Code Series* 100, sihlinzeka ngenye indlela engasetshenziswa abantu abamnyama ukuthola ubunikazi nokulawula amabhizinisi nezinsiza zomnotho. Isitatimende sichaza okudingekayo okucacisiwe maqondana nokwaziswa kobunikazi obudale ukuchithwa kwempahla, i-*equity instrument* noma elinye ibhizinisi ukuze kunikwe abantu abamnyama.

2.2 Ibhizinisi (uMthengisi) likwazi ukwazisa ubunikazi babantu abamnyama bokuthengisela abantu abamnyama (uMthengi) ibhizinisi elihlonzeka ngokuseceleni. Ibhizinisi elihlonzeke ngokuseceleni elihambisana nalo kumele libe yingxenye ye-*series* efanayo lobunikazi bese libe ngelika mthengisi, nangezinhloso seziTatimende 102, yibhizinisi elihambisana nomthengisi ngenxa yokuba yibhizinisi elingaphansi kwelinye, ibhizinisi elihlanganyelwe, i-*associate*, ingxenye yebhizinisi, uphiko lwebhizinisi, noma ezinye izinhlelo ezifana nalezo kanye nohlelomumo lobunikazi lomthengisi.

2.3 Nokho, lapho umthengisi esefake izicelo zokuthola imihlomulo ngokweSitatimende 102 ngaphansi kwesiqophamaphuzu sobunikazi baso angeke akwazi ukuthola imihlomulo ngaphansi komunxa wokuthuthukiswa kwamabhizinisi nabahlinzekizidingoi.

3. Yikuphi ukuthengiselana okungena ngaphansi kwalesi sitatimende?

3.1 Ukuthengiselana okufanelekile ngokwalesi Sitatimende kungabandakanya ukuthengiswa kokulandelayo:

(a) Impahla: Lokhu kuqondene nensiza engeyomthengisi enenzuzo ngokwezomnotho, isibonelo impahla, imishini noma amathuluzi, isikhungo sokukhiqiza njll.

(b) Ibhizinisi: Lokhu kusho ukuthi umthengisi kumele athengise ibhizinisi elihlonzeka ngokuseceleni eliyingxenye yochungechunge lobunikazi futhi libe ngelikamthengisi, njengebhizinisi elingaphansi kwelinye noma uphiko. Nokho, lokho akusho ukuthi umthengisi kusamele abandakanyeke ebunikazini bempahla edayisiwe emuva kokuthengiswa kwayo.

(c) Ama-*equity instruments*: Lokhu kusho impahla umbambiqhaza anelungelo lobunikazi ngayo ebhizinisini, isibonelo impahla eyizabelo zomkhiqizo webhizinisi njengalezo okuhwetshwa ngazo e-Johannesburg Securities Exchange, utshalomali olusamalimboleko oluguqulekayo njll.

3.2 Uma kuchazwa ngendlela elula, ukuthengiswa kwempahla, ibhizinisi noma ama-*equity instruments* kusho ukuthengiselana okubandakanya ukuthengiswa kwebhizinisi elisemthethweni eliseceleni elithathwa ngokuthi yibhizinisi elihlonzeka ngokuseceleni lapho impahla enjengamathuluzi noma umshini noma ama-*equity instruments* ebhizinisini elingaphansi kwelinye edluliselwa ebantwini abamnyama.

4. Ngeyiphi indlelakuhlukanisa yokufaneleka esetshenziswa ngaphansi kwalesi sitatimende?

4.1 Ibhizinisi, elibheke ukuhlomula kuSitatimende 102, kumele liveze ukuthi ukuthengiselana okubandakanya ukuthengiswa kwempahla, i-*equity instrument* noma ibhizinisi kuzodala eminye yemiphumela elandelayo:

(a) Ukwakhiwa kwebhizinisi eligcinekayo noma amathuba ebhizinisi eliphethwe ngabantu abamnyama kanye nokudluliswa kwamakhono asemqoka nafundelwe ngokukhethekile, amakhono ezokuphatha kanye namandla okukhiqiza kubantu abamnyama. Ngakho, abantu abamnyama kumele babe ngabanikazi futhi baziphathele ngokuzimele impahla, ibhizinisi noma i-*equity instrument* abayitholile, umthengisi angabi namthelela ekuthathweni kwezinqumo.

(b) Ukudayisa impahla, i-*equity instrument* kanye nebhizinisi kumele kubandakanye ibhizinisi elihlonzeka ngokuseceleni elingenamikhawulo noma imibandela engaqondakali maqondana namaklayenti noma amakhasimende ayo, futhi eliveza ukuthi linawo amanye amaklayenti, amakhasimende noma abahlinzekimsebenzi balo ngaphandle komdayisi. Lokhu kuphinde kusho ukuthi umthengisi akanakutshela

umthengi ukuthi ngamaphi amakhasimende umthengi angahwebelana nawo ngokwebhizinisi emuva kokudlulisa ibhizinisi.

(c) Noma eziphi izinhlelo zokwenzelwa umsebenzi ngelinye ibhizinisi okuphakathi kukamthengisi nebhizinisi elithintekayo kumele kubonisanwe ngakho kabanzi ngokwendlela elungile nefanelekile. Ngakho, lapho umthengi ekhetha ukusebenzisa izinsiza zomthengisi ngenxa yezizathu eziphathekayo, kumele kubonisanwe ngalezo zinhlelo ngokuzimele kanye nangendlela elinganisayo, ngaphandle kokuba umthengi afake incindezi engenasidingo, futhi umthengisi kumele angayiphazamisi imisebenzi noma ukuphathwa kwemisebenzi wumthengi emuva kokudluliswa kwempahla, ibhizinisi noma i-*equity instrument*.

(d) Ukuthengiselana kumele kuncike esilinganisweni sokuqinisekisa okuzimele okwenziwa ungoti ozimele. Lokhu kuyinqubo ebandakanya indlela yokukala emisiwe yempahla, ibhizinisi noma i-*equity instrument* kusetshenziswa izindlela ezimisiwe ezijwayelekile ezimele izenzo zasezimakethe emisiwe.

5. Kubalwa kanjani ubunikazi emuva kokuthengiselana?

5.1 Umthengisi obheke ukwaziswa kokuthengiselana okufanelekile ngaphansi kweSitatimende 102 sesiqophamaphuzu obunikazi, kumele aveze ukuthi imigomo yokwazisa esesigabeni 4 ikhona ngosuku lokukala. Isitatimende 102 siqhubeka sibize ukuthi ukubalwa kwamaphuzu okufinyelela ebunikazini (noma inani elikhulu) kumele sisulwe kokulandelayo:

(a) Inani eliphelele lokuthengiselana;

(b) Inani lama-*equity instruments* elikubantu abamnyama ngokuzimele ebhizinisini elihlonzeka ngokuseceleni elihambisana nalo;

(c) Inani lokuqhuba umsebenzi lokutholakala kwesikweletu kwabantu abamnyama ngokuzimele ebhizinisini elihlonzeka ngokuseceleni elihambisana nalo; kanye

(d) Nakho konke ukubala ngokwezindima (a) kuya ku-(c) ngenhla kumele kusebenzise indlela yokuhlola emisiwe.

6. Ukulandelwa kweminxa eseqhulwini ngaphansi kweSitatimende 000

6.1 Umthengisi osebenzisa iSitatimende 102 sokulandelwa kobunikazi ngokugcwele noma ngokwengxenye, kuzodingeka ukuba alandele umgomo wobunikazi obungebe ngaphansi kwama-40% obunikazi kanye nezaphulelo ngokobungako bokuthengiselana okubandakanya ibhizinisi elihambisanayo elihlonzeka ngokuseceleni.

6.2 Umthengisi kuzodingeka ukuba alandele yonke iminxa eseqhulwini (ukuthuthukiswa kwamakhono namabhizinisi kanye nokuthuthukiswa kwabahlinzekimsebenzi) njengoba kudingeka esigabeni 3.3 seSitatimende 000.

7. Ukwaziswa wuMthengisi

7.1 Indlela yokubala engezansi njengoba yendlalwe kuSithasiselo 102 (A) isebenza ekunqumeni iphesenti lobunikazi ekwenzeni umsebenzi lokusebenzisa amalungelo okuvota kanye nentshisekelo ngokwezomnotho noma ngabe zingakanani ezabelo ezingezabantu abamnyama ebhizinisini elithola impahla:

$A = \frac{B}{C} \times D$
Lapho U-***A*** eyiphesenti lobunikazi ekwenzeni umsebenzi lokusebenzisa amalungelo okuvota kanye nenzuzo kwezomnotho esiqophamaphuzu obunikazi U-***B*** uyisilinganiso sokuthengiselana okufanelekile ebhizinisini elihlonzeka ngokuseceleni kusetshenziswa indlela yokuhlola emisiwe U-***C*** uyisilinganiso somthengisi esinqunywa kusetshenziswa indlela yokuhlola emisiwe U-***D*** kungamaphesenti ayinkomba yebhizinisi elihlonzekayo eliseceleni

7.2 Eminyakeni emithathu yokuqala emuva kokuthengiselana, umthengisi uzowabona amaphuzu obunikazi ngosuku lokukala ngokususela esilinganisweni somthengisi kanye nesilinganiso esiyisonasona sebhizinisi elihlonzekayo eliseceleni.

7.3 Kodwa, onyakeni ngamunye emuva konyaka wesithathu, umthengisi uzobona amaphuzu obunikazi ngosuku lokukala ngokususela ephesentini lenkomba yobunikazi okufinyeleleke kulo ngosuku lokukala ngonyaka wesithathu emuva kokuthengiselana.

7.4 Phezu kwalokho, umthengisi obheke ukwaziswa ngokuthi udayise ngokufanelekile kokusebenzisa amalungelo okuvota kanye nentshisekelo kwezomnotho ngokwesiqophamaphuzu obunikazi, kumele athole umbhalo oyisibuyekezo senani lokuthengisiwe elihlolwe wungoti ozimele, okudingeka ukuba aveze umbono ngokwenani lokuthengisiwe. Ukwaziswa okuqhubekayo kuphinde kuncike embonweni kangoti ozimele esekela inani lokuthengiselana.

7.5 Ukwazisa amaphuzu esewonke kukamthengisi kuzosuselwa emaphuzwini atholakale kusetshenziswa umgomo omiswe esigabeni 5 ngenhla ngonyaka wesithathu wokuthengiselana, kusetshenziswa isakhi sokuphumelela njengoba kumiswe kuSitatimende 100, kuncike embonweni wokuthi ukubalwa kwenani lilonke kufanele futhi kusetshenziswa ngokuyikho ngonyaka ngamunye emuva konyaka wesithathu.

8. Kuyini ukungathengiswa kwempahla/kwebhizinisi noma i-equity instrumenti?

8.1 Ukuthengiselana okulandelayo akubalwa njengokuthengiselana okufanelekile kwempahla, ibhizinisi noma i-*equity instrument*:

(a) Ukudluliswa kwamalungelo ebhizinisi ngokwelayisense, ukuqasha noma ezinye izinhlelo zomthetho ezinjengalezo ezingadluliseli ubunikazi obungenamkhawulo. Lokhu kusho ukuthi ngokwesibonelo, noma ngabe ukukalwa kwempahla kungokwesikhathi eside njengeminyaka engama-30, lokho angeke kube kungudluliswa kobunikazi. Isibonelo sokudluliswa kwelungelo yilapho umthengisi enika umthengi ilungelo lokusebenzisa impahla engubuhlakani bomqondo lapho kwenziwa imisebenzi yebhizinisi isikhathi esinomkhawulo kube kukhokhwa.

(b) Ukuthengiswa kwama-*franchise* ngama-*franchisor* kuma-*franchisees* (lapho umuntu ekhokhela ukusebenzisa i-*trademark*), kodwa kubandakanywa ukuthengiswa kwama-*franchise* esuka kuma-*franchisees* eya kwamanye ama-*franchisees* noma kuma-*franchisees* amasha. Isibonelo, lapho i-*franchisee* ebeseyithole i-*franchise* kwenye i-*franchisor*, ihlose ukuthola enye i-*franchise* noma ukuthengisa i-*franchise* ekhona ithengisela enye i-*franchisee*. Izindawo zokudlela ziyizibonelo ezinhle zalolu hlobo lwebhizinisi.

(c) Ukuthengiselana okufanelekile ngokwesigatshana sokuthenga kabusha, lapho umthengisi enikwa ilungelo lokuthenga kabusha impahla, ibhizinisi noma i-*equity instrument* esikhathini seminyaka emithathu emuva kokuqaliswa kokuthengiselana, noma ngabe ukuqaliswa kokuthengiselana kudluliselwe esikhathini eseqa iminyaka emithathu. Umthengisi akakwazi ukuba nelungelo lokuphoqelela lokho kuthenga kabusha.

(d) Ukuhlela kabusha okusavumela umthengisi ukuba abe ngumnikazi futhi alawule imisebenzi yempahla okuthiwa ithengiselwe abantu abamnyama. Lokhu kumayelana nenqubo yokwakha kabusha, lapho umthengisi ngomthengi esathola inzuzo empahleni noma ebhizinisini ngokuba namasheya noma nokunikwa imvume yokuba novo ezinqumweni ezithile okumele zithathwe wumthengi maqondana nempahla noma ibhizinisi alithengile.

Indlela yokuxhumana nathi:
IKhomishana ye-B-BBEE
Block E, 2nd Floor
the dtic Campus
77 Meintjies Street
Pretoria
0002

Ikheli Leposi **le-dtic**
Private Bag X84
Pretoria
0001

Ucingo: (+27) 12 394 1535 / (+27) 82 903 6398
I-imeyli: MRamare@beecommission.gov.za mailto:MRamare@beecommission.gov.za
Isikhungo sokuxhumana namakhasimende **e-dtic:** 0861 843 384
Iwebhusayithi: www.bbbeecommission.co.za http://www.bbbeecommission.co.za/