

## **UKUQONDA UMGOMO WOMPUMELA WOKUQHUBEKA KWESIMO WOKWAZISA UBUNIKAZI BABANTU ABAMNYAMA EMUVA KOKUTHENGISWA NOMA KOKULAHLEKELWA YIZABELO ZABABAMBIQHAZA ABANGABANTU ABAMNYAMA**

### **1. Singobani?**

*I-Broad-Based Black Economic Empowerment Commission* isungulwe njengesikhungo esiphethwe uMnyango Wezohwebo, Izimboni NezokuQhudelana Kwezohwebo ("**i-dtic**"). IKhomishana yasungulwa ngokwesigaba 13B soMthetho *i-Broad-Based Black Economic Empowerment Act No. 23 of 2003* njengoba uchitshiyelwe kuMthetho *i-Broad-Based Black Economic Empowerment Act 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. Inhloso Yebhukwana**

2.1 Leli bhukwana lihlose ukuba umhlahlandlela wababambiqhaza be-B-BBEE futhi izinkampani kumele ziphathe futhi zikale ama-*equity instruments* e-B-BBEE emuva kokuthengiswa noma kokulahlekelwa yizabelo zababambiqhaza abangabantu abamnyama ngenxa yomgomo wokuqhubeka kwesimo.

### **3. Umgomo wokuqhubeka kwesimo uquketheni?**

3.1 Umunxa wobunikazi we-*Codes of Good Practice* (ama-*Codes*) ubheke ukufinyelela kuguquko olukhulu ekuhlukaniselani ngokobuhlanga kobunikazi nokuphathwa kwezinhloso ezikhona kanye namabhizinisi amasha. Lo munxa kumele ubonakale ngokwanda kwesibalo sabantu abamnyama abangabanikazi bemikhiqizo enenzuzo kuhambisana nokulawula ukuphathwa kwaleyo mikhiqizo.

- 3.2 Lapho kukhuthazwa ubunikazi kanye nokuphathwa kwamabhizinisi amasha nakhona ngabantu abamnyama, i-Code Series 100 Yezobunikazi, ngezizathu eziphathekayo, ivumela amabhizinisi ukuba azise ubunikazi babantu abamnyama emuva kokuthengiswa noma kokulahlekelwa yizabelo ze-B-BBEE. Lo munxa waziwa ngokuthi umgomo wokuqhubeka kwesimo.
- 3.3 Ibhizinisi lingakwazi ukuhlomula emgomweni wokuqhubeka kwesimo kuphela, lapho ukuthengiselana ngobunikazi kuhlangebazana ngokugcwele nezimfuneko ngokwesiqophamaphuzu obunikazi esilandelayo:
- a) Amalungelo okuvota asebenzisekayo. Amalungelo abaninizabelo okuvota emihlanganweni noma maqondana nezinqumo ngokususela isibalweni noma ephesentini lezabelo ezikhona kanye namalungelo ahambisana nezinga lalezo zabelo ebhizinisini.
  - b) Inzuzo yezomnotho. Amalungelo abanimasheya okuthola izabelo nezinzuzo noma ukukhula kwemali yebhizinisi.
  - c) Inani lilonke elisezandleni zabantu abamnyama ngenxa yokubamba iqhaza ngokuqondile noma ngokungaqondile ebhizinisini. Leli phuzu libandakanya ukukhokhwa kwemalimboleko nokukhishwa kwezinkokhelo zezabelo ukuqinisekisa ukukhokhwa kwanoma eziphi izimalimboleko ezithathwe ababambiqhaza abangabantu abamnyama ukuze bathole izabelo ebhizinisini.
  - d) Uma kwenzeka ubunikazi obutholakale ngoHlelo Lobunikazi Olusabalele (i-*Broad-Based Ownership Scheme*) (i-BBOS) noma uHlelo Lobunikazi Bezabelo Lwabasebenzi (i-ESOP) noma iThrasti, ubunikazi kumele ubunikazi nabo buhambisane nemithetho yeziThasiselo (B)-(D) zesiTatimende 100 ngokwahlukana.
- 3.4 Ngakho-ke, ibhizinisi alinakuzuza kumgomo wokuqhubeka kwesimo lapho ukuthengiselana ngobunikazi bekungahambisani noMthetho we-B-BBEE

kusukela ekuqaleni. Isibonelo, lapho indlelakuhlukanisa yezobunikazi eyodwa kwezintathu kungahlangatshezanwanga nayo, njengokudlulisela inzuzo yezomnotho kubantu abamnyama ngaphambi kokulahlekelwa noma ukuthengiswa kwezabelo, ibhizinisi alinakuthola maphuzu e-B-BBEE ngokusebenzisa umgomo wokuqhubeka kwesimo.

3.5 Lo mgomo wokuqhubeka kwesimo awuwagunyazi amaphuzu agcwele kusiqophamaphuzu sobunikazi. Ukubamba iqhaza okuvela ngokuqhubeka nokwazisa ubunikazi babantu abamnyama angeke kukwazi ukuba negalelo elingaphezu kwama-40% amaphuzu akusiqophamaphuzu obunikazi - lokhu kungama-40% amaphuzu angama-25 akhona. Uma ibhizinisi lidinga ukuba kwandiswe amaphuzu obunikazi alo, kuzobiza ukuba kube nokuthengiselana kwe-B-BBEE.

#### **4. Iyiphi indlelakuhlukanisa yokufaneleka esetshenziselwa ukuzuza ngaphansi komgomo wokuqhubeka kwesimo?**

4.1 Lapho kusetshenziswa khona umgomo wokuqhubeka kwesimo ukuze kwaziswe amaphuzu e-B-BBEE, kuncike kwindlelakuhlukanisa yama-*Codes*, ephinda inqande ukugwema umthetho nokuveza okungasilo iqiniso. Lokhu kusho ukuthi akukho konke ukuphuma kwabaninizabelo abangabantu abamnyama okuzofaneleka ukuba kwaziswe.

4.2 Ibhizinisi lingazisa ingxenye yobunikazi babantu abamnyama emuva kokuba abaninizabelo abangabantu abamnyama bephume ngokudayisa noma ngokulahlekelwa yizabelo kuncike ekutheni:

a) Umbambiqhaza ongumuntu omnyama ubenezabelo isikhathi esingengaphansi kweminyaka emi-3;

b) Inani lazo lilonke lingaphezulu-40% ngesikhathi sesigaba sokuthweswa iziqu kumele kube beselifeziwe ngesikhathi sokuthengiswa noma sokulahlekelwa izabelo; futhi

- c) Uguquko selwenzekile ebhizinisini kusetshenziswa izinga lokwazisa i-B-BBEE kusukela ekungeneni kwababambiqhaza abangabantu abamnyama kuya esikhathini sokuphuma.

#### 4.3 Kusebenza nemithetho yokwengezela elandelayo:

- a) Isivumelwano sabathathu esiphakathi kobolekiso (uma ekhona), ibhizinisi, kanye nombambiqhaza ongumuntu omnyama kumele sibhalwe imali ebolekiwe noma izinhlelo zokuvikela leyo mali, ngaphandle kwalapho ibhizinisi lingobolekiso; futhi
- b) Isikhathi okungeqiwe kuso ibhizinisi elifuna amaphuzu obunikazi ngaso ngaphansi kwalo mgomo, yisikhathi lapho ababambiqhaza abangabantu abamnyama ababa nezabelo ebhizinisini ngaso.

### **5. Ibhizinisi lingaqhubeka nokuzisa isikhathi esingakanani ngokomgomo wokuqhubeka kwesimo ngenxa yokulahlekelwa/yokuthengiswa kwezabelo wumbambiqhaza ongumuntu omnyama?**

- 5.1 Inzuzo ngaphansi komgomo wokuqhubeka kwesimo ayikwazi ukuqhubeka unomphela ngoba lokho kuzodelela ingqikithi yokudluliselwa kobunikazi kubambambiqhaza abangabantu abamnyama. Kunalokho kuwuhlelo lokudlulisa lokwazisa ubunikazi ngokusemthethweni kwesikhathi lapho abathintekayo bethengiselana kabusha.
- 5.2 Ngakho-ke, ukwaziswa kobunikazi be-B-BBEE ngokusebenzisa umgomo wokuqhubeka kwesimo uvumelekile iminyaka elinganayo naleyo abaninizabelo abangabantu abamnyama ababa nezabelo zabo ngaso, kuncike ekutheni okudingekayo okubalwe kwizigaba 3.3 no-4.2 ngenhla kuyafezeka. Lokhu kusho ukuthi uma ababambiqhaza bebe nezabelo iminyaka emihlanu (5), ibhizinisi lingakwazi ukufuna amaphuzu obunikazi eminyaka emihlanu (5) kuphela.
- 5.3 Lesi sikhathi sokwaziswa ngesokunika ibhizinisi ithuba lokucabanga ngokuqalisa enye indlela yokuthengiselana nabanye ababambiqhaza abangabantu

abamnyama ezosithuthukisa ngaphandle kokulahlekelwa ngamaphuzu obunikazi. Njengoba kushiwo ngenhla, uhlelo olwalunamaphutha ngokohlelo noma ukuqaliswa kwalo alukwazi ukufaneleka ngokwalo mgomo.

**6. Abalwa kanjani amaphuzu obunikazi kusetshenziswa umgomo wokuqhubeka kwesimo?**

6.1 Amaphuzu obunikazi ebhizinisini ngaphansi komgomo wokuqhubeka kwesimo azobalwa ngokuphindaphinda iminxa elandelayo:

- a) Inani elakhiwe yizakhiwe yizandla zababambiqhaza abangabantu abamnyama njengephesenti lenani lilonke lezabelo zabo ebhizinisini, ngosuku lokudayisa noma lokulahlekelwa izabelo;
- b) Isimo se-B-BBEE sebhizinisi sisuselwa kusiqophamaphuzu eslinganisayo ngosuku lokukala; kanye
- c) Namaphuzu obunikazi avela ngenxa yebhizinisi ngosuku lokuthengisa noma lokulahlekelwa yizabelo.

**7. Indlela yokubala ukwazisa ubunikazi emuva kokuthengisa noma kokulahlekelwa izabelo kwababambiqhaza abangabantu abamnyama.**

7.1 Lapho kubalwa amaphuzu obunikazi emuva ibhizinisi selithengise izabelo, kuzosetshenziswa indlela yokubala elandelayo:

$A = B \times C \times D$
Lapho U- <b>A</b> uyiphesenti lamalungelo obunikazi obuqhubekayo emuva kokuthengiswa noma kokulahlekelwa <i>i-equity instrument</i> kukambambiqhaza ongumuntu omnyama esigabeni 3.8 se-Code Series 100.

**U-B** uyiphesenti lamalungelo obunikazi enkomba ngayinye kusiqophamaphuzu obunikazi ayesuselwa kumbambiqhaza ongumuntu omnyama ngaleso sikhathi emuva kokuthengisa noma kokulahlekelwa yizabelo.

**U-C** uyiphesenti lenani selilonke elihlinzekwe esigabeni 3 se-Code Series 100 elisetshenziselwe ama-*equity instruments* adayisiwe noma alahleke kubabambiqhaza abangabantu abamnyama ngosuku lokuthengisa noma lokulahlekelwa. Inani lebhizinisi likalwa ngokosuku lokuthengisa noma lokulahlekelwa izabelo.

**U-D** uyizinga lokwaziswa kwe-B-BBEE esanda kunqunywa kwebhizinisi (okumele libe ngaphansi konyaka owodwa (1) ngokususela emuphumeleni wesiqophamaphuzu esiwujikelele sayo yonke iminxa ngaphandle kobunikazi obunqunywe kusetshenziswa iSitatimende 000.

7.2 Njengoba kuvezwe kuthebhula elingenhla, futhi kwendlalwa esigabeni 5 seSithasiselo 100 (E) se-Code Series 100, ngezinhloso zokubala amaphuzu obunikazi ngaphansi kwamaphuzu okuqhubeka nokwazisa, iphuzu "**D**" linqunywa kusetshenziswa isiqophamaphuzu sezokubala ngokwamaqhingu okungawabandakanyi amaphuzu okuphunyelelwe kuwo ngokwengxenywe wobunikazi.

## **8. Uqinisekiswa kanjani umgomo wokuqhubeka kwesimo?**

8.1 Uma kunqunwa amaphuzu obunikazi kusetshenziswa umgomo wokuqhubeka kwesimo, i-ejensi yokuqinisekisa noma ongoti njengoba kumiswe kumanuwali yokuqinisekisa ekhishwe **yi-dtic**, kumele isebenzise izindlelakwenza zokuqinisekisa ezimisiwe bese inqume ukuthi:

- a) Abantu abamnyama babe namalungelo okuvota asebenzisekayo;
- b) Inzuzo ngokwezomnotho eqongelelelwe abantu abamnyama;
- c) Bekunenani elikhulu elibonakalayo elisezandleni zabantu abamnyama;

- d) Uma kwenzeka ubunikazi obutholakale ngoHlelo Lobunikazi Olusabalele (i-BBOS) noma uHlelo Lobunikazi Bezabelo Lwabantu (i-ESOP) noma iThrasti, ubunikazi kumele ubunikazi nabo buhambisane nemithetho yeziThasiselo (B) - (D) zesiTatimende 100 ngokwahlukana;
- e) Ukunquma ukuthi umbambiqhaza ongumuntu omnyama ubenezabelo isikhathi esingengaphansi kweminyaka emi-3;
- f) Inani lazo lilonke lingaphezulu kwama-40% ngesikhathi sesigaba sokuthweswa iziqu kumele kube beselifeziwe ngesikhathi sokuthengiswa noma sokulahlekelwa izabelo;
- g) Ukubona ukuthi ingabe uguquko selwenzekile na ebhizinisini kusetshenziswa izinga lokwazisa i-B-BBEE kusukela ekungeneni kwababambiqhaza abangabantu abamnyama;
- h) Uma izabelo zalahleka, buyekeza isivumelwano phakathi kwebhizinisi, umbambiqhaza ongumuntu omnyama kanye nomboleki kumele baqinisekise ukuthi bayayibhala phansi imali ebolekiwe noma izinhlelo zokuvikela leyo mali, ngaphandle kwalapho ibhizinisi lingumbolekisi futhi kuqinisekiswa ukuthi ukwazisa akuseqi isikhathi efanele;
- i) Bala kabusha imihlomulo yokuqhubeka nokuqinisekisa ukuthi ingaphansi kwama-40% omphumela okusiqophamaphuzu sobunikazi; futhi
- j) Kubabambiqhaza abamnyama abalahlekelwa noma abathengisa izabelo zabo, bathola ubufakazi bosuku lokuthola kanye nosuku okwalahleka noma okwathengiswa izabelo ngalo.

8.2 Ngakho, iqhaza le-ejensi yezokuqinisekisa noma ungoti wukwenza inqubo yokuqinisekisa okuzimele kwalokho okushiwo ibhizinisi maqondana nokudingekayo okubalwe ngenhla. Leli qhaza alibandakanyi ukuhlinzekwa kwezeluleko ebhizinisini maqondana noMthetho we-B-BBEE okuvele kuphazamise ukuzimela okudingekayo ukuze kuqinisekise. Leso senzo singaba wukuziphatha ngendlela engawulungele umsebenzi okuyinto

ephambene nezimpokophelo zoMthetho we-B-BBEE.

- 8.3 I-ejensi yokuqinisekisa noma ongoti abawenzii umsebenzi wokudlulisa izinqumo noma inkundla yokubuyekeza isimo seKhomishana ye-B-BBEE lapho umbono wokuhlola noma wezeluleko esicelweni somgomo wokuqhubeka kwesimo wakhishelwa ibhizinisi.

## **9. Izikhalo Ezivelayo ngoMgomo Wokuqhubeka Kwesimo**

- 9.1 IKhomishana ye-B-BBEE ngesikhathi sokwenza umsebenzi wayo ibalule izikhalo ezilandelayo lapho kufakwa isicelo somgomo wokuqhubeka kwesimo ukuze kwaziswe amaphuzu obunikazi e-B-BBEE.

- a) Ubunikazi babantu abamnyama bunezinkinga kusaqalwa nje. Isibonelo, lapho ukungabibikho kobunikazi kwavela ngamathrasti noma ama-BBOS, impokophelo yethrasti noma i-BBOS isukile ekulawuleni ukudluliselwa kobunikazi ezandleni zabantu abamnyama.
- b) Abantu abamnyama abazange babandakanywe emisebenzini nasezinqubweni zokuthatha izinqumo zebhizinisi.
- c) Ukwazisa izinhlaka zobunikazi obunezinkinga nge-ejensi yokuqinisekisa noma okwenziwa wungoti.
- d) Akukho ukubonakala kwenani elikhulu elibonakele ngesikhathi abantu abamnyama benezabelo ebhizinisini.
- e) Ukwazisa izinhlaka ezidelela izimfuno zobunikazi ngokwesiTatimende 100.



**Indlela yokuxhumana nathi:**

IKhomishana ye-B-BBEE  
Block E, 2<sup>nd</sup> Floor  
**the dtic** Campus  
77 Meintjies Street  
Sunnyside  
0002

Ikheli Leposi  
Private Bag X84  
Pretoria  
0001

Ucingo: (+27) 12 394 1535

I-imeyli: [MRamare@beecommission.gov.za](mailto:MRamare@beecommission.gov.za)

Isikhungo sokuxhumana namakhasimende **e-dtic**: 0861 843 384

Iwebhusayithi: [www.bbbeeecommission.co.za](http://www.bbbeeecommission.co.za)