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B-BBEE COMMISSION
a member of the dti group

UKUQONDA NGOKWAMUKELWA KOBUNIKAZI NGESIKHWAMA SEZIMALI EZITSHALIWE

1. Singobani?

I-Broad-Based Black Economic Empowerment Commission ("B-BBEE Commission") isungulwe njengengxenye yezokuphatha eMnyangweni wezoHwebo,ezeziMboni nezokuQhudelana Kwezohwebo ("**i-dtic**") ngaphansi komthetho i-Broad-Based Black Economic Empowerment Act 53 of 2003, njengokuchitshiyelwa ngokomthetho i-Act 46 of 2013 ("i-B-BBEE Act"). Umsebenzi wayo uhlanganisa ukubhekelela ukuqala kokusetshenziswa kwe-B-BBEE Act nokulwisana nezenzo zokungalandelwa kwezimiso zomthetho i-B-BBEE Act.

2. Inhloso Ngebhukwana

2.1 Leli bhukwana lihlose ukulekelela ekukalweni nasekusetshenzweni kwezikhwama zezimali ezitshaliwe ngokumayelana nobunikazi ngokwe-B-BBEE.

3. Kuchaza ukuthini ukusebenza kwe-B-BBEE ngokwezikhwama zezimali ezitshaliwe?

3.1 Umunxa wobunikazi ngokwe-Codes of Good Practice (ama-Codes) uphokophelele ukuqinisekisa izinguquko ezinqala ekwakhekeni ngokobuhlanga kwabangabanikazi nezinhlaka zabaphethe izinkampani ezintsha nezindala. Ukusetshenziswa kwezikhwama zezimali ezitshaliwe kungenye yezindlela zokuqinisekisa ukuthi nokukudluliselwa komnotho waseNingizimu Afrika ezandleni zabantu abamnyama.

3.2 Inhloso yezikhwama zezimali ezitshaliwe ukukhuthaza ukwakhiwa komnotho nokukhuliswa kwezinkampani zezikhwama zezimali ezitshaliwe zabantu abamnyama. Isikhwama sezimali ezitshaliwe siyisikhwama semali etshalelwa abaniniyo ngokomyalelo wabo. Isibonel, uhlelo lokutshala imali ngokuhlanganyela esetshenziselwa ukutshwalwa ngezindlela ezihlukene ngokuhambelana nesu lokutshalwa kwezimali lwesikhwama.

3.3 Ngaphezulu kokukhuthaza ukwakhiwa kwezinkampani ezitshala izimali zabantu abamnyama, lesi sikhwama sisetshenziswa njengomgudu olandelwayo ukuze kutshwalwe izimali ezinkampanini zabamnyama okugwema izinselelo zokufinyelela ekuxhasweni ngezimali okubhekene nezinkampani zalolu hlobo eziningi zabamnyama. Kulolu daba, kunokuhlinzekelwa okwenziwe ukuze ukutshalwa kwezimali okwenziwe abaphathi balezi zikhwama kukwazi ukwamukelwa njengokwenziwa abaninimasheya abamnyama futhi ngesikhathi esifanayo kunesidingo kubona sokuba baxhase ngezimali okuzoholela ekubambeni iqhaza kwabamnyama abangabatshalizimali.

3.4 Lokhu kuhlinzekelwa kuhambisana no-Section 2 (e) we-B-BBEE Act, obeka ngokuthi izinhloso ze-B-BBEE phakathi kwezinye, ukukhuthaza izinhlelo zokutshala izimali eziholela ekubambeni iqhaza kwezomnotho kwabamnyama okusabalele ukuze kube nomthelela wentuthuko eqhubekayo nokunotha jikelele.

4. Yimiphi imigomo esetshenziselwa ukwamukela ubunikazi ngokusebenzisa isikhwa sezimali ezitshaliwe?

4.1 Lapho isikhwama sezimali ezitshaliwe samukeleka khona, sisuke samukelwa ngaphansi kwemigomo ekuma-Codes, evimbela ukuba kungabi nokunqamulela noma ukuhlinzeka kwemininingwane engeyiyo. Lokhu kusho ukuthi akuzona zonke izikhwama zezimali ezitshaliwe ezizokwazi ukuhlomula ngaphansi kohlelo lwe-B-BBEE, noma ngabe ziyigcina imithetho ngokwezohwebo.

4.2 Inkampani ekaliwe ingathatha ngokuthi ubunikazi bayo bungobabamnyama uma bungumphumela wokutshala izimali ngale ndlela, lapho lesi sikhwama sihambelana nalokhu:

a) Okungenani ama-51% amalungelo okuvota omphathi wesikhwama ahambelana nezindlela zesikhwama lapho sinamalungelo obunikazi khona, kufanele abe ngawabantu abamnyama;

b) Okungenani ama-51% wabaphathi abakhulu besikhwama nabaphathi abaphezulu kufanele babe abantu abamnyama;

c) Okungenani ama-51% enzuzo eyenziwe ngumphathi wesikhwama, emuva kokutshalwa kwemali, kufanele, ngokwesivumelwano esibhaliwe, abe ngawabantu abamnyama. Itemu elithi inzuzo lisho inzuzo etholakele ngokusebenza kukamphathi wesikhwama kanye nenzalo eyenziwe ngumphathi wesikhwama (kanye/noma izinkampani ezixhumene naso, kuphela uma ama-51% enzuzo axhumene nomphathi wesikhwama) etholakala emuva kokutshalwa kwemali okwenziwe;

d) Umphathi wesikhwama kufanele abe yinkampani enobunikazi obungokwe-B-BBEE echazwa njengebhizinisi elisemthethwen elinabanikazi bamasheya, noma abantu ababambe iqhaza, elilawulwa ngokwe-B-BBEE. Ababambe iqhaza abamnyama kufanele babe okungenani nama-51% amalungelo onke akalwe ngokwendlela ye-flow-through; futhi

e) Umphathi wesikhwama kufanele aphokophelele ukutshala ama-51% wenani lemali ezinkampanini ezinobunikazi bamasheya obungama-25% ngokusebenzisa indlela ye-flow-through principle. Umphathi wesikhwama angaletha ubunikazi bamasheya ngesikhathi sokuqala kotshalozimali uma inkampani ingazifezi izimiso ezibekiwe zama-25% obunikazi bamasheya ngesikhathi sokuphothulwa kokutshalwa kwezimali.

4.3 Ubunikazi benkampani ephethe isikhwama buzohlonzwa ngokusebenzisa okubekwe ngokwe-Statement 100. Lokhu kukhomba ukuba kufanele kube namalungelo okuvota asebenzayo, okungamalungelo abanikazi bamasheya okuvota emihlanganweni noma ngokwezinqumo ezithathelwe esibalweni samaphesenti amasheya namalungelo ahambelana nesigaba salawo masheya enkampanini. Futhi bukhomba okuhlosiwe ngokwezomnotho, okuyilungelo labanikazi bamasheya lokuthola ingeniso nenzuzo noma ukukhula. Lokhu futhi kukhomba nokusezandleni zabantu abamnyama ngeqhaza labo ngqo noma ngezinye izindlela enkampanini. Impokophelo yalokhu ukubhekelela izinto ezifana nokukhokhwa kwemalimboleko nokukhokhwa kwemali yabanamasheya ukuze kuqinisekiswe ukukhokhwa kwemalimboleko esetshenziswe ukuze kutholakale amasheya abantu abamnyama ababambe iqhaza.

5. **Amaphuzu obunikazi ngokwe-B-BBEE amukelwa kanjani**?

5.1 Uma isikhwama sifeza lokhu okubalulwe ngenhla kusho ukuthi sona nezinkampani okutshalwe kuzi izimali zingakwazi ukuba zifake isicelo sokuthola amaphuzu obunikazi ngokwe-B-BBEE, lokhu kuzokwenziwa ngale ndlela:

(i) Ngosuku ngalunye lokukalwa (izinga elinikwa abaphathi besikhwama lizosebenza isikhathi esiyizinyanga eziyi-12 months); tokufika kamuva Phakathi komhla we-11 kuMfumfu (October) 2014 nosuku lokusungulwa kwesikhwama esisha;

(ii) Phakathi konyaka kusukela osukwini lokuqala ukusebenza, okungaphezulu kwama-5% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi itshalwe ezinkampanini ezinobunikazi bamasheya babantu abamnyama obungama-25%;

(iii) Eminyakeni emibili kusukela osukwini lokuqala ukusebenza, ama-10% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi

atshalwe ezinkampanini ezinobunikazi bamasheya babantu abamnyama obungama-25%;

(iv) Ngosuku lokuqala lonyaka wesithathu kanye nosuku lokugcina lonyaka wesine kusukela osukwini lokuqala ukusebenza, okungaphezulu kwama-20% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi kutshalwe ezinkampanini ezinobunikazi bamasheya abamnyama obungama-25%;

(v) Ngosuku lokuqala lonyaka wesihlanu kanye nosuku lokugcina lonyaka wesithupha kusukela osukwini lokuqala ukusebenza, okungaphezulu kwama-30% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi kutshalwe ezinkampanini ezinobunikazi bamasheya abamnyama obungama-25%;

(vi) Ngosuku lokuqala lonyaka wesikhombisa kanye nosuku lokugcina lonyaka wesishiyagalombili kusukela osukwini lokuqala ukusebenza, okungaphezulu kwama-40% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi kutshalwe ezinkampanini ezinobunikazi bamasheya abamnyama obungama-25%; kanye

(vii) Ngosuku lokuqala lonyaka weshiyagalolunye kuya phambili kusukela osukwini lokuqala ukusebenza, okungaphezulu kwama-51% enani lemali etshalwe yisikhwama kufanele ngaso sonke isikhathi kutshalwe ezinkampanini ezinobunikazi bamasheya abamnyama obungama-25%;

5.2 Lokhu uma kubekwa ngendlela elula kuchaza ukuthi:

Unyaka Wokutshalwa kwemali	**Amaphesenti Abekiwe**
1	>5%
2	>10%
3 kuya 4	>20%

5 kuya 6	>30%
7 kuya 8	>40%
9 nangaphezulu	51%

5.3 Kufanele kuqashelwe ukuthi isikalo sokungenani ama-51% senani lemali etshalwe yisikhwama noma yisiphi kufanele sitshalwe ezinkampanini ezinobunikazi bamasheya babantu abamnyama obungama-25% futhi kuzokalwa ngokuhambelana nzindleko zotshalozimali olwenziwe yisikhwama;

5.4 Uma kukhulunywa ngezikhwama zezimali ezitshaliwe esezitshale imali ngokugcwele ngaphambi komhla we-11 kuMfumfu (October) 2014, utshalozimali olwenziwe ngabaphathi besikhwama luyothathwa njengolwenziwe ngabantu abamnyama uma isikhwama zokutshalwa kwezimali zifeza lokhu okulandelayo:

(i) Okungenani ama-51% amalungelo okuvota abaphathi besikhwama ahambelana nezindlela ezisetshenziswa yisikhwama zokugcina amalungelo okuvota abanikazi enkampanini ekaliwe, kufanele abe ngawabantu abamnyama;

(ii) Okungenani ama-51% enzuzo eyenziwe abaphathi besikhwama emuva kokutshalwa kwezimali, kufanele kube yisivumelwano esibhaliwe, kube ngeyabantu abamnyama; kanye

(iii) Abaphathi besikhwama kufanele babe yinkampani enobunikazi ngokwe-B-BBEE.

5.5 Ngakhoke, uma iinkampani engabaphathi besikhwama ihambelana nezimiso ezingenhla, akubalulekile ukuthi ngobani abayihlinzeke ngezimali zokuqala ibhizinisi, isikwama nezinkampani esitshale kuzo izimali bangakwazi ukuthi amasheya esikhwama angawabantu abamnyama.

6. Ziqinisekiswa kanjani izikhwama zokutshalwa kwezimali?

6.1 Uma kubhekwa ubunikazi be zikhwama zokutshalwa kwezimali, inkampani eqinisekisayo noma oqeqeshelwe ukuqinisekisa, ngokwezimiso ngezindlela zokuqinisekisa ezikhishwe **yi**-**dtic**, kufanele basebenzise lezi zimiso ukuze kutholakale lokhu:

(i) Umphathi wesikhwama kufanele abe yinkampani enobunikazi ngokwe-B-BBEE;

(ii) Okungenani ama-51% amalungelo okuvota abaphathi besikhwama ahambelana nezindlela ezisetshenziswa yisikhwama zokugcina amalungelo okuvota abanikazi enkampanini ekaliwe, kufanele abe ngawabantu abamnyama ngokwezimiso zama-Codes;

(iii) Okungenani ama-51% abaphathi abakhulu nabaphezulu benkampani ephethe isikhwama kufanele babe ngabantu abamnyama njengokwezimiso zama-Codes; kanye

(iv) Okungenani ama-51% enzuzo eyenziwe abaphathi besikhwama emuva kokutshalwa kwezimali, kufanele kube yisivumelwano esibhaliwe, kube ngeyabantu abamnyama.

6.2 Ngakhoke, iqhaza lenkampani eqinisekisayo noma oqeqeshelwe ukwenza lokhu kufanele baqinisekise ngokuzimela okushiwo yinkampani ekaliwe mayelana nalezi zimiso ezingenhla. Lo msebenzi awuhlanganisi ukunikwa kwezeluleko enkampanini mayelana nokuqondwa komthetho i-B-BBEE Act ngoba lokho kuphazamisa ukuzimela okudingekayo ukuze kuqinisekiswe ngendlela efanele. Lokhu kululekwa akuvumelekile ngoba kungukuziphatha okuphambene nezinhloso zomthetho i-B-BBEE Act.

6.3 Inkampani eqinisekisayo noma oqeqeshelwe ukwenza lokhu abasebenzi njengabalalela izicelo noma ababuyekezayo esikhundleni sekhomishana i-B-

BBEE Commission lapho kukhishwe khona umphumela wokuhlolwa noma izeluleko ngokwesimo senkampani ephethe isikhwama ezikhishiwe.

7. Okukhathazayo Okuvelayo Ngezinkampani Zokutshalwa Kwezimali

7.1 Ikhomishana i-B-BBEE Commission ngesikhathi iqala ukwenza umsebenzi wayo ibone lokhu okulandelayo okuyikhathazayo:

a) Ubunikazi bezinkampani eziphethe ukutshalwa kwezimali abufizifezi izimiso ezintathu ezibekwe ngokwe-Statement 100, futhi noma ubunikazi babamnyama bungobethrasti noma uhlelo lobunikazi obusabalele, abuhambisani nemithetho ezikwizengezo ezingama-Annexes 100 (B) no (D).

b) Akukho mthelela wabantu abamnyama ekusebenzeni kwezinkampani lapho kutshalwe khona izimali.

c) Akusetshenziswa imigomo nezindlela zokusebenza zohwebo ukuze kuvikelwe ukunathuthukiswa kwabantu abamnyama. Isibonelo, inzuzo eyabiwayo ingalingani nama-51% enzuzo efinyelela kubantu abamnyama.

d) Kunokwenziwa kokufeza izimiso ze-B-BBEE ngoba kunesidingo sokubonakala kwenkampani ihambelana nomthetho we-B-BBEE kodwa kungenanhloso yokuthuthukisa abantu abamnyama njengoba kuphokophelelwe ngomthetho i-B-BBEE Act.

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