

UKUHLONYISWA OKUBANZI KWEZOMNOTHO KWABANTU ABAMNYAMA

ISAZISO ESICHAZAYO SOKU-01 SONYAKA WE-2023

UKUQONDA INQUBO YOPHENYO YEKHOMISHANI YOKUHLONYISWA OKUBANZI KWEZOMNOTHO KWABANTU ABAMNYAMA NJENGOBA KUQONDISWA NGUMTHETHO WE-B-BBEE.

A. Isingeniso

1. IKhomishana Yokuhlonyiswa Okubanzi Kwezomnotho Kwabantu Abamnyama (“iKhomishana ye-B-BBEE”) iwuhlaka olusungulwe uMthetho Wokuhlonyiswa Okubanzi Kwezomnotho Kwabantu Abamnyama wama-53 wonyaka we-2003 njengoba uchtshiyelwe uMthetho wama-46 wonyaka we-2013 (“uMthetho”), ukuze wengamele ukusetshenziswa koMthetho, okubandakanya ukuhlinzekwa kwemihlahlandlela yokusebenza, izaziso ezichazayo, imibono yokweluleka engabophezeli nezinsizakalo zokucacisa ukuze kuthuthukiswe ukuqondwa koMthetho.
2. Ngokwesahluko se-13F(1)(c) iKhomishani ye-B-BBEE ivunyelwe ukwamukela izikhalazo eziphatelene ne-B-BBEE ngendlela uMthetho oyihlinzekele ngayo. UMthetho futhi esahlukweni se-13F(1)(d) udinga ukuthi iKhomishana ye-B-BBEE iphenye, ngokuzenzela kwayo noma ngokuphendula izikhalazo ezitholiwe, nganoma yiluphi udaba oluphatelene ne-B-BBEE. ISimiso se-15 seZimiso ze-B-BBEE sichaza inqubo yokufakwa kwezikhalazo.
3. Lesi Saziso Esichazayo sikhishwe ngokwesahluko se-13F(3)(b)(i) soMthetho ukuze siqondise nanoma yiliphi ilungu lomphakathi mayelana nenqubo yophenyo yeKhomishana ye-B-BBEE ngemuva kokuthola isikhalazo noma lapho isinqume ngokwayo ukuqala uphenyo.

B. Siyini isikhalazo se-B-BBEE?

4. Isikhalazo wudaba oluqalwe yiKhomishani ye-B-BBEE ngokwesahluko se-13J(1) soMthetho, noma oluthunyelwe kwiKhomishani ngokwesahluko se-13F(1)(c) soMthetho.
5. Ukuze isikhalazo sicutshungulwe yiKhomishana ye-B-BBEE, sifanele sihlobane nokwepfulwa koMthetho we-B-BBEE, futhi singangena ngaphansi kwanoma yiziphi izici ze-B-BBEE okungukuthi, ubunikazi, ukulawulwa kokuphatha, ukuthuthukiswa kwamakhono, ukuthuthukiswa kwamabhizinisi kanye nabahlinzeki kanye nokuthuthukiswa kwenhlalakahle yezomnotho, okubandakanya nanoma iyiphi ingxenye yomkhakha othile.
6. Ukwepfulwa kwalo Mthetho ngokuvamile kungaholela emkhutsheni wokubeka abantu njengabaholi. Umkhuba wokubeka abantu njengabanikazi ubandakanya msebenzi, ukuhlela noma esinye isenzo noma ukuziphatha okubukela phansi ngokuqondile noma ngokungaqondile noma okukhungathekisa ukufezwa kwezinhloso zoMthetho we-B-BBEE noma ukusetshenziswa kwanoma yimiphi imibandela yalo Mthetho, kubandakanya kodwa kungapheleli nje ekuziphathemi okuhlobene nesinyathelo se-B-BBEE— (a) ngokwemibandela lapho abantu abamnyama abaqokwe emabhizinisini bedikibalisiwe noma bevinjelwe ukubamba iqhaza kokwenziwayo okubalulekile kwalelo bhizinisi; (b) ngokwemibandela yemihlomulo yezomnotho etholwe ngenxa yesimo esibanzi sokuhlonyiswa okubanzi kwezomnotho kwabantu kwabamnyama salelo bhizinisi esingageleli kubantu abamnyama ngesilinganiso esishiwo emibhalweni efanele yezomthetho yalelo bhizinisi; (c) okubandakanya ukwenziwa kobudlelwane obusemthethweni nomuntu omnyama ngenhloso yalelo bhizinisi yokufeza izinga elithile lokuthotshelwa kokuhlonyiswa okubanzi kwezomnotho kwabantu abamnyama ngaphandle kokunikeza lowo muntu omnyama imihlomulo yezomnotho elindeleke ngemfanelo ukuthi ihlotshaniswe nesimo noma isikhundla esiphethwe yilowo muntu omnyama; noma (d) okubandakanya ukwenziwa kwesivumelwano nenye inkampani ukuze kufezwe noma kuthuthukiswe isimo zokuhlonyiswa okubanzi kwezomnotho kwabantu abamnyama ezimweni lapho— (i) kukhona imikhawulo ebonakalayo, kungakhathaliseki ukuthi isobala noma ayikho sobala, mayelana nobunikazi babaphakeli, abahlinzeki bezinsizakalo, amakhasimende noma amakhasimende; (ii) ukugcinwa kwemisebenzi yebhizinisi ngendlela efanele kubhekwa njengento

engenakwenzeka, kubhekwa izinsiza ezikhona; (iii) imigomo nemibandela akuxoxiswananga ngayo ngendlela enobulungiswa nephusile; (iv) ukungahlangabezani nezibopho zesivumelwano ezibekelwe ukuthuthukiswa kwebhizinisi nabaphakeli kanye nokuthuthukiswa kwamakhono.

C. Ubani ongafaka isikhalazo?

7. Nanoma yimuphi umuntu othintwa umkhuba wokubekwa njengomnikazi webhizinisi noma ilungu lomphakathi elithintekayo angafaka isikhalazo kwiKhomishana ye-B-BBEE mahhala. Uhlangothi olufaka isikhalazo lungakwenza lokho ngqo kwiKhomishana ye-B-BBEE noma ngokumelwa umthetho naoma nganoma yiluphi olunye uhlobo.
8. Ukufuna ummeleli wezomthetho nama nanoma yiluphi olunye uhlobo ukuze ufake isikhalazo kwiKhomishana ye-B-BBEE akuphoqelekile, futhi noma yiliphi uhlangothi olukhetha ukucela ukumelwa okunjalo kudingeka lukwenze lokho ngokuzithandela. Isikhalazo esifakwe noma esifakwe ngaphandle kwanoma yiluphi uhlobo lokumelwa siyothola ukunakwa nokuphathwa ngendlela efanayo kwiKhomishini ye-B-BBEE.
9. Kunezimo ezingagunyaza umuntu ukuthi afake isikhalazo, kodwa angafuni ukudalula ubuyena, lokho kuvunyelwe. Kodwa-ke, lapho umuntu ekhetha ukungadalulwa igama lakhe, iKhomishana ye-B-BBEE ngeke iphoqeleke ukuthi inikeze nanoma yiluphi ulwazi olusha mayelana nesimo sesikhalazo, kuze kube yilesi sikhathi lapho ukungaziwa kuyaphendula khona ngokubhalela ikhomishana ye-B-BBEE. Ngakolunye uhlangothi, lapho ukungaziwa kungaziwa, umuntu uzoba nelungelo lokucela ukwaziswa ngesikhalazo ngezikhathi ezithile esebenzisa inombolo yefayela anikwe yona.
10. Isikhalazo singahoxiswa futhi ngokubhalela iKhomishani ye-B-BBEE nganoma yisiphi isikhathi ngaphambi kokuthi iKhomishani ye-B-BBEE yenze okutholakele kanye nesi(izi)ncomo s(z)ayo. Ngaphandle kokuhoxiswa kwesikhalazo, iKhomishana ye-B-BBEE ingahle iqhubeke nokuphenya isikhalazo sengathi iKhomishana ye-B-BBEE eqale ngokwesahluko se-13J(1) uma kufanele ukwenza njalo.

D. Yiziphi izikhalazo eziningi?

11. Nganoma ngasiphi isikhathi ngemuva kokuthi isikhalazo siqaliswe yiKhomishana ye-B-BBEE, noma sithunyelwe ngomunye umuntu, iKhomishana ye-B-BBEE ingashicilela isaziso esidalula izinsolo zokwepfulwa futhi imema nanoma yimuphi umuntu ukuthi afake isikhalazo maqondana nalolo daba okholelwa ukuthi uthintwe yilesi senzo esisolwayo noma esithinta izinto ezibonakalayo zalowo muntu.
12. Kukhona futhi izimo lapho iKhomishani ye-B-BBEE ingahle ihlanganise noma ijoyine izikhalazo ezimbili noma ngaphezulu ngaphansi kophenyo olufanayo uma udaba luthinta abantu abafanayo (abantu) abangaba abamangalelwa. Uma iKhomishana ihlanganisa izikhalazo ezimbili noma ngaphezulu njengoba kugunyazwe uMthetho, isikhalazo ngasinye sizoqhubeka sihlonzwe ngokwehlukana ngenombolo yaso yefayela. Ukuhlanganiswa akusishintshi isimo sommangali, futhi umuntu ngamunye ohambise esinye sezikhalazo ezihlanganisiwe uyohlala engummangali.
13. Lapho izikhalazo sezihlanganisiwe, kungenzeka ukuthi uphenyo lungavunyelwa kwesinye izikhalazo noma ngaphezulu, futhi esimweni esinjengalesi, iKhomishana izokwazisa umuntu/abantu abathintekayo, futhi iqhubeke nokuphenya noma yiziphi izikhalazo ezihlanganisiwe ezisele, kuye ngokuthi aziswe ummangali futhi inqobo nje uma isikhathi sonyaka sopenyo singakapheli.
14. Lapho isikhathi sokuphenya sesiphelile, iKhomishana ifanele kungakapheli izinsuku ezingamashumi amathathu (30) ithumele isaziso kummangali ikhombisa ukuphela kwesikhathi, futhi icele ukwelula isikhathi sopenyo ngokugcwalisa IFOMU elimisiwe i-B-BBEE 21. Lapho umfakisikhalazo engakwazi noma enqaba ukwelulwa kwesikhathi, iKhomishana ingahle iqhubeke nokuphenya udaba njengokungathi iyona eqale uphenyo.

E. Iyiziphi imibhalo edingekayo ukuze ufake isikhalazo?

15. Uhlangotho oluletha isikhalazo kwiKhomishani ye-B-BBEE lufanele lugcwalise ngokuphelele futhi lithumele iFomu B-BBEE 7.

16. IKhomishani ye-B-BBEE iphinde idinga imibhalo engezansi ukuze isekele iFomu B-BBEE 7:
 - 16.1 Isitatimende esifungelwe esinikeza umlando wesikhalo kusukela ekuqaleni kuze kube yisikhathi lapho udaba lubikwa kwiKhomishani ye-B-BBEE;
 - 16.2 Ikhophi eqinisekisiwe kamazisi wommangali;
 - 16.3 Isitifiketi Samasheya sommangali maqondana nesikhalazo sobunikazi;
 - 16.4 Isivumelwano sobanikazi bamasheya/iMemorandamu Yokuhlanganiswa/iMemorandamu Yokubandakanywa kwenkampani/kwezinkampani isikhalazo esimelene nas(z)o;
 - 16.5 Isinqumo noma amaminithi emihlangano ebanjiwe maqondana nenkampani (izinkampani) isikhalazo es(z)iqondiswa kuy(z)o;
 - 16.6 Ulwazi/Isitatimende Sezezimali sohlangothi (izinhangothi) olu(ezi)ngahle lu(zi)be um(aba)mangalelwa;
 - 16.7 Isitifiketi se-B-BBEE/I-Afidavithi efungelwe yohangothi (izinhlangothi) isikhalazo esiphikisana nazo;
 - 16.8 Izaziso zamaholo zomuntu ofaka isikalazo;
 - 16.9 Imininingwane yokuxhumana yakamuva yommangalelwa (Igama lomuntu okuxhunyana naye, ikheli, ikheli le-imeyili kanye neminingwane yokuxhumana);
 - 16.10 Incwadi egunyazayo uma isikhalazo sifakwa egameni lomunye umutnu noma egameni lenyunyana; futhi
 - 16.11 Nanoma yimiphi eminye imibhalo efanele ezosiza iKhomishana ye-B-BBEE ngokubika ngodaba.
17. Lapho umbhalo osohlwini olungenhla ungekho noma ungasebenzi esikhalazweni esifakwayo, sicela ukubonise lokhu kwiFomu B-BBEE 7 noma kwisitatimende esifungelwe.

F. Kuyini ukugeleza kwenqubo yophenyo?

18. Lapho ithola isikhalazo, iKhomishana ye-B-BBEE ngokwesimiso se-15 seZimiso ze-B-BBEE ilindeleke ukuthi yamukele isikhalazo ngokubhala phansi kungakapheli izinsuku ezinhlanu (5) futhi inikeze nenombolo yefayela.
19. Kulandela ukukhishwa kwenombolo yefayela, iKhomishana ye-B-BBEE ifanele kungakapheli izinyanga eziyishumi nambili (12):
 - 19.1 Ihlole ukufaneleka kwesikhalazo;
 - 19.2 Icele nanoma yiluphi olunye ulwazi kumfakisikhalazo ngokukhipha iFomu B-BBEE 8. Lapho iKhomishana icele olunye ulwazi kumfakisikhalazo, ulwazi kufanele lulethwe kungakapheli izinsuku eziyishumi nane (14) kutholwe isaziso sesicelo sokuthola olunye ulwazi, futhi uma uhlangothi lwehluleka ukwenza lokho, iKhomishana ye-B-BBEE ingahe isivale isikhalazo noma iqhubeke nokusiphenya sengathi iKhomishana eqale udaba;
 - 19.3 Lapho iKhomishana ye-B-BBEE ihlola ukufaneleka kwesikhalazo inquma ukuthi udaba alukho ngaphansi kokugunyazwa kwayo noma alugunyazi uphenyo, iKhomishana iyoqhubeka nokukhipha isaziso sokungaphenyi (iFomu B-BBEE 11) isinike umfakisikhalazo kanye nezizathu.
 - 19.4 Phenya ngesikhalo uma kunesizathu sokwenza njalo, futhi wazise ummangalelwa(aba)mangalelwa ngesikhalazo ngokukhipha iFomu B-BBEE 10. Uphenyo luzolandela izinqubo ezihambisana noMthetho, futhi luhambisana nayo yonke imithetho ephathelene nokuphathwa ngendlela efanele yezinqubo zobulungisa ezisebenza ophenyweni;
 - 19.5 IKhomishana ye-B-BBEE iphinde inikwe amandla yisahluko se-13H soMthetho we-B-BBEE ukuthi idlulisele nanoma yimaphi amandla anikezwe uKhomishana noma yimuphi umsebenzi awunikezwe ngokoMthetho, kunoma yimuphi umuntu onolwazi olufanele kanye nesipiliyoni oqokwe noma onenkontileka neKhomishana ukuthi ayisize ekwenzeni imisebenzi yayo.

- 19.6 Ngesikhathi sopenyo iKhomishana ingakhipha amasamanisi ngeFomu elimisiwe le-B-BBEE 20 ngokuhambisana nesahluko se-13K soMthetho we-B-BBEE;
- 19.7 IKhomishana njengengxenywe yopenyo ingaphinde inqume ukubamba umhlangano wokulalela ngokusemthethweni ngokuhambisana nenqubo yeKhomishana phambi kwePheneli eholwa uSihlalo; futhi
- 19.8 Yenza okutholakele ngokubhala, ngokuncoma noma ngaphandle kwezincomo. Okutholakele kuzokwaziswa bobabibili um(aba)fakisikhalazo kanye nom(aba)mangalelwa. Ngaphambi kokuthatha isinqumo sokugcina ngokwesahluko se-13J(3) soMthetho, iKhomishani ifanele yazise ummangalelwa ngokubhala phansi imininingwane yanoma yikuphi okutholiwe okuphambene naye, futhi inikeze um(aba)mangalelwa izinsuku ezingama-30 zokuphendula ngakunye noma kunanoma yikuphi okutholiwe. IKhomishani, ngokubheka ukufaneleka noma ngesicelo sommangalelwa, ingelula isikhathi sezinsuku ezingama-30 ngesinye isikhathi kanye esingeqi ezinsukwini eziyishumi (10).
- 19.9 Uma ummangalelwa ehluleka ukuphendula kokutholakele ngakunye noma kunoma yisiphi isixazululo esibi kungakapheli isikhathi esinqunyiwe ngemuva kokwaziswa yiKhomishani ngalokho, iKhomishana iyoqhubeka nokuthola lokho ekutholile ngokwesahluko se-13J soMthetho.
- 19.10 IKhomishani ingahle ngendlela ebona ifanele ingashicilela okutholakele. Ukushicilelwa kungeeke kwenzeka lapho:
- 19.10.1 Ukubuyekezwa kobulungiswa ngesinqumo seKhomishani kuqalwe ngummfakisikhalazo noma ummangalelwa ukuba kungakapheli isikhathi esivunyelwe;
- 19.10.2 IKhomishana iludlulisele oPhikweni Lukazwelonke Lwezokushushisa noma oPhikweni Lwezemisebenzi Yamaphoyisa aseNingizimu Afrika, futhi akukho cala elivulelwe lowo othintekayo;
- 19.10.3 Uma umuntu othintekayo eshushiswe futhi wakhululwa kulandela uphenyo lweKhomishana; noma

19.10.4 Lapho umuntu othintekayo egwetshwe yinkantolo yomthetho, kulandela uphenyo lweKhomishani, ngaphambi kokuba lowo muntu mayelana nokugwetshwa kwakhe usebenzise zonke izinyathelo zomthetho ezaziwayo eziphathelene nokudluliswa kwecala noma ukubuyekezwa kwalo.

19.11 Uma iKhomishana ngesikhathi iphenya ngesikhalazo, inombono wokuthi udaba lungaxazululwa ngenye indlela yokuxazulula izingxabano (ADR), iKhomishani ingahle isize ukuxazululwa kodaba noma iludlulisele, ngeFomu elimisiwe le-B-BBEE 12, lolo daba kunoma iyiphi inqubo efanele yokuxazulula izingxabano noma kwisithangami esifanele ngokwezinqubo zayo. Lapho uhlelo lwe-ADR lungaphumelelanga ukuxazulula ukungaboni ngaso linye phakathi kwezinhlangothi, iKhomishani ingahle iqhubeke nokuphenya udaba uma ikubona kufanele ukwenza kanjalo.

20. Esimeni lapho iKhomishana inezizathu ezizwakalayo zokukholelwa ukuthi umbhalo ofakwe maqondana nophenyo uqukethe ulwazi olungamanga, iKhomishani ingahle ikhiphe isicelo sokuthola ulwazi okuyilona kwiFomu B-BBEE 9 kumuntu ofake lowo mbhalo, ukuze leyo mininingwane elungisiwe ilethwe kungakapheli izinsuku eziyi-14 kutholwe isaziso sesidingo sokulungiswa kweminingwane.
21. Lapho iKhomishana ye-B-BBEE izinqumele yona ngokwayo ukuqalisa uphenyo izokwenza lokho ngokukhipha isaziso sokuphenya ngeFomu elimisiwe le-B-BBEE 10 futhi ilandele inqubo echazwe esigabeni se-19.4 ukuya kwese-19.7 ngenhla.
22. Uma iKhomishana inombono wokuthi kudingeka isikhathi esengeziwe ukuphetha inqubo yayo mqondana nophenyo njengoba kuhrongozwe, iKhomishana ifanele yazise umfakisikhalazo ngesidingo sokwelulwa kwesikhathi, ichaze izimo ezigunyaza isikhathi eside, kanye nesikhathi okuyisona sangempela esidingekayo njengesandiso.
23. IKhomishana, uma iluphenyile udaba futhi kunezizathu ezizwakalayo, idlulisela nanoma yikuphi ukukhathazeka oPhikweni Lokukolekwa Kwentela LaseNingizimu Afrika, nanoma yisiphi isiphathimandla esilawulayo, ngokukhipha IFOMU B-BBEE 13.

24. Ukudluliselwa kwezinye izikhungo kuzolandela imiyalelo eyisibopho yaleso sikhungo futhi iKhomishana ye-B-BBEE ayinamandla okulawula isinqumo nezinqubo zaleso sikhungo.

G. Isiphetho

25. IKhomishani ye-B-BBEE izibophezele ekuhlangabezaneni nezikhathi ezimiselwe ukuphothula uphenyo. Nokho-ke, lokhu kulele ebunzimeni bophenyo kanye nokubambisana okuvela kuzo zonke izinhlangothi ezithintekayo.

26. IKhomishani ye-B-BBEE izibophezele ekuqinisekiseni ukuthi uMthetho usetshenziswa ngendlela engaguquki ukuze kufezwe izinhloso ze-B-BBEE okufanele zilethe umnotho obandakanya wonke umuntu.

27. Amandla nemibono yeKhomishana ye-B-BBEE ngokoMthetho, okubandakanya namandla ayo okuphenya izikhalazo, awathintwa inqubo yokukhishwa kweSaziso Esicahazao nganoma yiluphi udaba oluthile.

28. IKhomishani ye-B-BBEE izoqinisekisa ukuthi iyazisa nganoma yiziphi izinguquko zenqubo echazwe kulesi Saziso Esichazayo.

29. Uma unemibuzo noma udinga ukucaciseleka okuthe xaxa ngalesi Saziso Esichazayo, sicela ukhululeke ukuxhumana nathi kule mininingwane yokuxhumana elandelayo:

B-BBEE Commission

Private Bag X31

Pretoria

0001

Ucingo: +27 12 394 1535

I-imeyili: info@beecommission.gov.za

Uhlelo Lokugeleza Kwenqubo



Ukhishwe iKhomishana we-B-BBEE?

8 Septhema 2023