

**IMEMORANDAMU MAQONDANA NEZINJONGO
ZESICHI BIYELO-MTHETHOSIVIVINYWA
WEZOBUNIKAZI BENGXENYE YESAKHIWO, wezi-2020**

1. IZINJONGO ZOMTHETHOSIVIVINYWA

Isichibiyelo-mthethosivivinywa Wezobunikazi Bengxenywe Yesakhiwo, wezi-2020 (“uMthethosivivinywa”), sihlose ukuchibiyela uMthetho Wezobunikazi Bengxenywe Yesakhiwo, we-1986 (uMthetho ongunombolo 95 we-1986) (“uMthetho”), ukuze—

- (a) kuchitshiyelwe izincazelo-magama ezithile;
- (b) kuhlinzekelwe ukuthi umthuthukisi-sakhiwo aphenule imibuzo ebuzwe kuyena ngabameleli babaqashi-sakhiwo;
- (c) futhi kuhlinzekelwe ukuchitshiyelwa kwamapulani ezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene, maqondana nezindawo ezisetshenziswa ngabakhethekileyo kuphela;
- (d) futhi kuhlinzekelwe ukuchitshiyelwa kanye nokwesulwa kwepulani yesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene uma kuphuma umyalelo wenkantolo oqondene nalokhu;
- (e) kuhlinzekelwe ukuqoshwa phansi kwetayitela lomhlaba maqondana nokuphela kwesikhathi sokugcinwa kwelungelo eliphelele lobunikazi bomhlaba ngokwesigaba 25;
- (f) kuhlinzekelwe ukuqashisa ngengxenywe yomhlaba ongaphansi kobunikazi obuhlanganyelwe ngemvume yabanikazi bamalungelo omhlaba abhalisiwe;
- (g) kuchitshiyelwe izimiselo zomthetho ezihlobene nokuhlukaniswa komhlaba ongaphansi kobunikazi obuhlanganyelwe;
- (h) futhi kuhlinzekelwe ukwesulwa kwengxenywe yesakhiwo okubanjiswe ngayo noma indawo esetshenziswa ngabakhethekileyo kuphela okubanjiswe ngayo;
- (i) futhi kuhlinzekelwe ukuthi umthuthukisi-sakhiwo athumele ipulani kuMhloli-Jikelele Wemihlaba ukuze ihlukaniswe izingxenyana ezahlukene noma kuhlunganiswe zonke izingxenywe zayo zibe yinto eyodwa ukuze kugunyazwe ukuhlukaniswa, ukuhlunganiswa kanye nokwelulwa kwengxenywe yesakhiwo;
- (j) kwelulwe ukubhaliswa kokuhlukaniswa kwengxenywe yesakhiwo, ukuhlunganiswa kwezingxenywe zesakhiwo kanye nokwelulwa kwezingxenywe zesakhiwo zinikezwe umthuthukisi-sakhiwo;
- (k) kuhlinzekelwe ukugcwaliswa kwamaphepha-mbhalo azovala isikhala samaphepha-mbhalo alahlekile noma ecekeleke phansi uma kunamaphepha-mbhalo alahlekile noma acekeleke phansi;

- (l) kuchitshiyelwe izimiselo zomthetho ezihlobene nokwelulwa kwesikimu;
- (m) kuchitshiyelwe izimiselo zomthetho ezihlobene nezabelonani ezinqunyiwe zezingxenyane zesakhiwo;
- (n) kulawulwe ubulungu bebhodi yobunikazi bengxenyane yesakhiwo; futhi
- (o) kuhlinzekelwe izindaba ezixhumene nalokho.

2. UKUHLAZIYWA KWESIGATSHANA SOMTHETHO NGASINYE

2.1 Isigaba somthetho 1

2.1.1 Isigatshana somthetho 1 sihlose ukuchibiyela isigaba 1 soMthetho.

2.1.2 Amagama encazelo ekhona njengamanje “yendawo esetshenziswa ngabakhethekileyo kuphela” akhuluma ngokusetshenziswa kwendawo “ngumnikazi noma abanikazi kuphela bengxenyane yesakhiwo eyodwa noma ngaphezulu”. Incazelo ingahunyushwa futhi ngendlela engavalela ngaphandle noma yimuphi umuntu ongeyena umnikazi ekusebenziseni indawo esetshenziswa ngabakhethekileyo kuphela, njengomqashi-sakhiwo, umuntu onikezwe ilungelo elisemthethweni lokusebenzisa indawo ethile okungeyona eyakhe noma ngisho nalowo oshade nomnikazi wendawo imbala noma elinye ilungu lekhaya lomnikazi. Isichibiyelo esihlongozwayo kwisigatshana somthetho 1(a) soMthethosivivinywa sihlose ukucacisa kahle isimo salokhu.

2.1.3 Incazelo “yoMthetho Wezokuphathwa Kobunikazi Bengxenyane Yesakhiwo” ithi lona nguMthetho wonyaka wezi-2010, okuyinto eyiphutha. Isichibiyelo esihlongozwayo kwisigatshana somthetho 1(b) soMthethosivivinywa silungisa iphutha elikhona kwisicaphuno “soMthetho Wezokuphathwa Kobunikazi Bengxenyane Yesakhiwo”.

2.2 Isigatshana somthetho 2

Isigatshana somthetho 2 sihlose ukuchibiyela isigaba 4 soMthetho, esiqondene nokugunyazwa kwezikimu zokuthuthukiswa komhlaba futhi sihlinzekela ukuthi umthuthukisi-sakhiwo abambe umhlangano nomqashi-sakhiwo esithile ezimweni lapho ingxenyane yesakhiwo leso kuzoqashiswa ngayo ngokuphelele noma ngokwengxenyana ngenhloso yokuhlalisa abantu. Isigaba

4(3)(b) sihlinzekela ukuthi umthuthukisi-sakhiwo aphenyule yonke imibuzo ephusile futhi enengqondo yalabo baqashi-sakhiwo abakhona emhlanganweni onjalo. Sekuhlonzwe isidingo sokuhlinzekela futhi nokuthi ummeleli womqashi-sakhiwo akwazi ukubambela umqashi-sakhiwo lowo futhi athathe izinqumo egameni lakhe ezimweni lapho yena umqashi-sakhiwo engekho emhlanganweni.

2.3 Isigatshana somthetho 3

2.3.1 Isigatshana somthetho 3 sihlose ukuchibiyela isigaba 14 soMthetho, esiqondene nokuchitshiyelwa kanye nokwesulwa kwamapulani ezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene.

2.3.2 Isigaba 14 sihlinzekela kuphela izindaba eziphathelene nezingxenye zezakhiwo ezithintekile ngenxa yamapulani angalungile ezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene. Kunesidingo esikhona futhi sokwelulwa kobubanzi bokusebenza kwesigaba 14 ukuze kubandakanywe izindawo ezisetshenziswa ngabakhethekileyo kuphela ezithintekile ngenxa yamapulani angalungile ezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene. Izichibiyelo ezihlongozwa kwizigatshana zomthetho 3(a) no (b) zoMthethosivivinywa zihlose ukulungisa lesi simo.

2.3.3 Isigaba 14(8) soMthetho sihlinzekela ukwesulwa kwepulani yesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene ngomyalelo wenkantolo. Isichibiyelo esihlongozwayo sihlose ukucacisa isimo ezimweni lapho kukhona umkhandlu owengamele isakhiwo futhi lapho inkantolo iyalela ukuthi kwesulwe ipulani yesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene.

2.4 Isigatshana somthetho 4

Isigatshana somthetho 4 sihlose ukuchibiyela isigaba 15B soMthetho, esihlinzekela ukubhaliswa kokudluliswa kobunikazi maqondana nesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene. Isigaba 15B soMthetho asisho lutho mayelana nokuqoshwa phansi kokuphela kwesikhathi selungelo eligodliwe ngokwesigaba 25(1) soMthetho. Ukwengezwa kwesigatshana 1(e), njengoba lokhu kuhlangoziwe kwisigatshana somthetho 4 soMthethosivivinywa, kuhlose ukuhlinzekela ukuqoshwa phansi kwetayitela elifanelekile

lapho umthuthukisi-sakhiwo esefake isicelo, noma lapho isicelo sifakwe ngumkhandlu owengamele isakhiwo ezimweni lapho engasekho umthuthukisi-sakhiwo.

2.5 Isigatshana somthetho 5

2.5.1 Isigatshana somthetho 5 sihlose ukuchibiyela isigaba 17 soMthetho, esiqondene nokuhlukaniswa kanye nokuqashiswa kwesakhiwo esinobunikazi obuhlanganyelwe. Ngokwesigaba 17(4)(b), umbhalisi ngeke asibhalise isivumelwano sokuqasha esiqondene nomhlaba oyingxenywe yesakhiwo esinobunikazi obuhlanganyelwe, ngaphandle uma isivumelwano sokuqasha leso senziwa ngaphansi kombandela wokuthotshelwa kwawo wonke amalungelo omnikazi waleyo ngxenywe yesakhiwo. Isigaba 17 asikuhlinzekeli ukuthi isivumelwano sokuqasha senziwe ngaphansi kombandela wokuthotshelwa kwamalungelo omnikazi womhlaba ngokwezigaba 25 no 27. Ukuchitshiyelwa kwesigaba 17(4)(b), njengoba kuhlangoziwe kwisigatshana 5(a) soMthethosivivinywa kuhlose ukuqinisekisa ukuthi lokhu kuyenzeka.

2.5.2 Isigaba 17(4B) sihlinzekela ukuhlukaniswa kwengxenywe yesakhiwo esinobunikazi obuhlanganyelwe okubhaliswe kusona indawo esetshenziswa ngabakhethekileyo kuphela noma ingxenywe yendawo leyo. Kodwa-ke, ukubhaliswa kokudluliswa kwesakhiwo esinobunikazi obuhlanganyelwe kungenziwa kuphela emuva kokwesulwa kwendawo esetshenziswa ngabakhethekileyo kuphela, noma ingxenywe yayo, okuyindawo engaphakathi kwesakhiwo esinobunikazi obuhlanganyelwe esizodluliswa. UMthetho awuyihlinzekeli imisebenzi nemidanti eyingxenywe yendawo esetshenziswa ngabakhethekileyo kuphela. Ukuchitshiyelwa okuhlongozwayo kwesigaba 17(4B)(a) no (b), njengoba lokhu kuqukethwe kwisigatshana somthetho 5(b) soMthethosivivinywa kuhlose ukulungisa lesi simo.

2.5.3 Isichibiyelo esihlongozwa kwisigaba 17(4C), njengoba lokhu kuqukethwe kwisigatshana somthetho 5(c) soMthethosivivinywa, singumphumela wokuchitshiyelwa kwesigaba 17(4B), okukhulunywa ngakho kwindinyana 2.5.2.

2.6 Isigatshana somthetho 6

Isigatshana somthetho 6 sihlose ukuchibiyela isigaba 18 soMthetho esenza ukuthi izimiselo zezigaba 56 no 57 zoMthetho Wamarekhodi Agciniwe Amatayitela, we-1937 (uMthetho ongunombolo 47 wonyaka we-1937), zihambisane nokudluliswa kwendlu okubanjiswe ngayo kanye nesakhiwo esinobunikazi obuhlanganyelwe okubanjiswe ngaso, kanye nokunikezela ngesivumelwano sokuqasha indlu okubanjiswe ngaso kanye nelungelo eliphelele lobunikazi bomhlaba okubanjiswe ngalo okungelendlu ethile. Kodwa-ke, lesi sigaba esishiwoyo asisho lutho maqondana nokwesulwa, ngaphansi kwesigaba 17, kwesakhiwo okubanjiswe ngaso, indawo esetshenziswa ngabakhethekileyo kuphela, kanye namalungelo okwelulwa komhlaba. Isigatshana somthetho 6 sihlose ukuhlinzekela ukubandakanywa okudingekayo.

2.7 Isigatshana somthetho 7

Isigaba 21 soMthetho sihlinzekela ukugunyazwa kwamapulani ezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene ukuze kuhlukaniswe futhi kuhlanganiswe izingxenywe zezakhiwo. Isigaba 21 asikuhlinzekeli ukuthi, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, umhloli womhlaba noma umklami wokwakhiwa kwezindlu athumele kuMhloli-Jikelele womhlaba uhlaka lwepulani yesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene yokuhlukaniswa noma ukuhlanganiswa kwezingxenywe zesakhiwo, noma ngabe yikuphi kulokhu okubili, ukuze lugunyazwe. Isigatshana somthetho 7 sihlose ukufaka isigaba 21(1A) kuMthetho, ukuze kuhlinzekelwe ukuthi umthuthukisi-sakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, ayalele ukuthi umhloli womhlaba noma umklami wokwakhiwa kwezindlu athumele kuMhloli-Jikelele womhlaba uhlaka lwepulani yesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene yokuhlukaniswa noma ukuhlanganiswa kwezingxenywe zesakhiwo, noma ngabe yikuphi kulokhu okubili, ukuze lugunyazwe.

2.8 Isigatshana somthetho 8

2.8.1 Isigatshana somthetho 8 sihlose ukuchibiyela isigaba 22 soMthetho, esiphathelene nokubhaliswa kokuhlukaniswa kwengxenywe yesakhiwo. Ukufakwa okuhlongozwayo kwezigaba 22(1A) no 22(2A), kuhloswe ngakho ukuhlinzekela ukuthi umthuthukisi-sakhiwo afake isicelo sokubhaliswa kwepulani yesakhiwo esinobunikazi obungaphansi kwabanikazi

abahlukene yokuhlukaniswa kwengxenywe yesakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo.

2.8.2 Isigaba 22(5) sihlinzekela ukugunyazwa kwamatayitela abhaliswe maqondana netayitela lengxenywe yesakhiwo ukuze kubonakaliswe ukuhlukaniswa kwezakhiwo lokho. Kodwa-ke, isigaba 22(2) esihlinzekela ukufakwa kwamatayitela afanelekile ngezinhloso zokuthola ukugunyazwa, asisho lutho ngendaba yesivumelwano sokuqasha. Isigatshana somthetho 8 sihlose ukufaka isigaba 22(2)(cA) ukuze kuhlinzekelwe ukufakwa kwesivumelwano sokuqasha.

2.8.3. Izigatshana zomthetho 8(c) no (d) zihlose ukuchibiyela isigaba 22(2)(d) kanye nokususa isigaba 22(2)(e) soMthetho. Isigaba 22(2)(d) soMthetho sihlinzekela ukukhishwa kwezitifiketi zesakhiwo esinobunikazi obungaphansi kwabanikazi abahlukene zikhishelwa abantu abanelungelo lokunikezwa zona ngokwesivumelwano sokuhlukaniswa kwesakhiwo. Kodwa-ke, isimo esifanele nesilungileyo sokuhlukaniswa kwesakhiwo wukuthi izitifiketi zezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene zikhishwe ngamagama abanikazi ababambisene ebunikazini besakhiwo-ngqangi. Emuva kwalokho-ke ukudluliswa kokuhlukaniswa kwesakhiwo kungabhaliswa kulandela ukukhishwa kwesitifiketi zesakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene ezibhalisiwe.

2.9 Isigatshana somthetho 9

2.9.1 Isigaba 23 soMthetho siqondene nokubhaliswa kokuhlanganiswa kwezingxenywe zesakhiwo. Isigatshana somthetho 9 sihlose ukuchibiyela isigaba 23 soMthetho, ngokufaka izigaba 23(1A) no 23(2A) ukuze kuhlinzekelwe ukuthi umthuthukisi-sakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, afake isicelo sokubhaliswa kwepulani yokuhlanganiswa kwezingxenywe zesakhiwo ezimbili noma ngaphezulu.

2.9.2 Isigaba 23(2) soMthetho sihlinzekela ukugunyazwa kwamatayitela abhalisiwe maqondana netayitela lengxenywe yesakhiwo ukubonakalisa ukuhlanganiswa kwesakhiwo lokho. Isigatshana somthetho 9 sihlose ukuchibiyela isigaba 23(2) soMthetho ngokufaka isigaba 23(2)(cA) ukuze

kuhlinzekelwe ukufakwa kwamatayitela afanelekile ngezinhloso zokuthola ukugunyazwa, ukuze kuhlinzekelwe ukufakwa kwesivumelwano sokuqasha.

2.10 Isigatshana somthetho 10

2.10.1 Isigatshana somthetho 10 sihlose ukuchibiyela isigaba 24 soMthetho, esiqondene nokubhaliswa kokwelulwa kwesakhiwo esiyingxenywe yesikimu.

2.10.2 Ukufakwa okuhlongozwayo kwezigaba 24(3A) no 24 (6AA) kuhlose ukuhlinzekela ukuthi umthuthukisi-sakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, ayalele ukuthi umhloli womhlaba noma umklami wokwakhiwa kwezindlu athumele kuMhloli-Jikelele womhlaba uhlaka lwepulani yokwelulwa kwengxenywe yesakhiwo ukuze kutholakale ukugunyazwa okunjalo.

2.10.3 Isigatshana somthetho 10 sihlose futhi ukuchibiyela isigaba 24(6) soMthetho, esihlinzekela amaphepha-mbhalo okumele athunyelwe nesicelo kumbhalisi ukuze kubhaliswe ipulani yokwelulwa kwengxenywe yesakhiwo, ngokuthi kufakwe isivumelwano sokuqasha ohlwini lwamaphepha-mbhalo okumele athunyelwe nesicelo leso esishiwoyo.

2.11 Isigatshana somthetho 11

2.11.1 Isigatshana somthetho 11 sihlose ukuchibiyela isigaba 25 soMthetho, esiqondene nokwelulwa kwesikimu ngokuthi kwengezwe izingxenywe zezakhiwo kanye nezindawo ezisetshenziswa ngabakhethekileyo kuphela.

2.11.2 Isigaba 25(2) soMthetho sihlinzekela ukufakwa nokugcinwa ehhovisi eligcina amarekhodi amatayitela, phakathi kokunye, ipulani ebandakanya izilinganiso zobukhulu besakhiwo ebonisa ingxenywe yomhlaba ohlanganyelwe othintekile ngenxa yokugcinwa kwelungelo eliphelele lobunikazi bomhlaba maqondana nokwelula kwesikimu, ipulani ebandakanya izilinganiso zobukhulu besakhiwo ebonisa indlela ezizohlukaniswa ngayo izakhiwo zibe yizingxenywe ezahlukene kanye nezindawo ezisetshenziswa ngabakhethekileyo kuphela, kanye nesheduli elibonisa isilinganiso sezabelo-nani ezinqunyiwe lazo zonke izingxenywe zesakhiwo.

Ukufakwa okuhlongozwayo kwesigaba 25(2A), kuhlose ukuhlinzekela ukuvalwa kwesikhala samaphepha-mbhalo agciniwe, ezimweni lapho amaphepha-mbhalo anjalo elahlekile noma ecekeleke phansi.

2.11.3 Isigaba 25(5A)(a) soMthetho sikhuluma kuphela ngokufakwa kwengxenywe yesakhiwo kwirejista elifanelekile lezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene. Isigatshana somthetho 11 sihlose ukuchibiyela isigaba 25(5A)(a), ukuze sifake phakathi futhi nendawo esetshenziswa ngabakhethekileyo kuphela.

2.11.4 Isigaba 25(6) soMthetho sihlinzekela ukuthi umkhandlu owengamele isakhiwo ufake isicelo sokwelulwa kwesikimu ezimweni lapho kungekho ukugcinwa kwelungelo eliphelele lobunikazi bomhlaba ngumthuthukisi-mhlaba ngokwesigaba 25(1), noma-ke uma ukugcinwa kwelungelo eliphelele lobunikazi bomhlaba okunjalo kwenzekile, kepha futhi sekuphelelwe isikhathi. Ilungelo elinjalo lingasetshenziswa ngumkhandlu owengamele isakhiwo ngemvume ebhalwe phansi yawo wonke amalungu omkhandlu owengamele isakhiwo kanye nabanikazi bamabhondi bazo zonke izakhiwo eziyingxenywe yesikimu. Ukuchitshiyelwa okuhlongozwayo kwesigaba 25(6) kuhlose ukufaka umbandela wokuthi umkhandlu owengamele isakhiwo ulisebenzise noma ulihlukanise noma ulidlulise ilungelo elinjalo kuphela emuva kokuthola imvume ebhalwe phansi yawo wonke amalungu omkhandlu owengamele isakhiwo, izinkampani ezihlinzeke ngesibambiso sezakhiwo kanye namalungelo ezakhiwo, kanye nabanikazi bamalungelo abhalisiwe ezakhiwo eziyingxenywe yesikimu, futhi laba abanakwenqaba nemvume enjalo ngaphandle kwesizathu esizwakalayo nesiphusileyo ngokomthetho.

2.11.5 Izichibiyelo ezihlongozwayo zezigaba 25(10)(c) no 25(10)(dA) zoMthetho, zihlose ukuqeda ukuphindaphindeka okukhona kwisigaba 25(10)(c) nesigaba 25(10)(dA), ezihlinzekela ukufakwa kanye nokugunyazwa kwamabhondi ezibambiso abhaliswe maqondana nesitifiketi selungelo eliphelele lobunikazi bomhlaba lokwelula isakhiwo.

2.12 Isigatshana somthetho 12

Isigatshana somthetho 12 sihlose ukuchibiyela isigaba 26 soMthetho, esiqondene nokwelulwa kwezikimu nokuthi kwengezwe umhlaba phezu kwesakhiwo esinobunikazi obuhlanganyelwe. Isigatshana somthetho 12 sihlose ukuhlinzekela ukwengezwa kwezigatshana (8) no (9), ukuze kuhlinzekelwe ukuthi umthuthukisi-sakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, afake isicelo sokubhaliswa kwepulani yokwelulwa kwesakhiwo esinobunikazi obuhlanganyelwe.

2.13 Isigatshana somthetho 13

Isigatshana somthetho 13 sihlose ukuchibiyela isigaba 27 soMthetho, ngokufaka isigatshana (5A), ukuvumela ukuthi umthuthukisi-sakhiwo, ngaphambi kokusungulwa komkhandlu ozokwengamela isakhiwo, akwazi ukwesula amalungelo akhe aqondene nokusetshenziswa ngokukhethekileyo kwezingxenye zesakhiwo esinobunikazi obuhlanganyelwe. UMthetho awusho lutho maqondana nokwesulwa kwamalungelo okusetshenziswa kwesakhiwo ngokukhethekileyo ngabathuthukisi-sakhiwo.

2.14 Isigatshana somthetho 14

Isigatshana somthetho 14 sihlose ukuchibiyela isigaba 32 soMthetho, esiqondene nezabelo-manani ezinqunyiwe zezingxenye zesakhiwo. Izigaba 32(1) no (2) ziqukethe izimiselo eziphathelene nokuthathwa kwesinqumo maqondana nezabelo-manani zezingxenye zezakhiwo futhi kwenziwe nokuthi izimiselo lezo zisebenze ngokuhambisana nesigaba 48 soMthetho. Isigaba 48 soMthetho saqedwa futhi sapheliswa ngokushaywa koMthetho Wezokuphathwa Kobunikazi Bengxenye Yesakhiwo, wezi-2011 (uMthetho ongunombolo 8 wezi-2011). Isigatshana somthetho 14 sihlose ukuvala isikhala samagama abhekise kwisigaba 48 soMthetho, ngamagama abhekise kwisigaba 17 soMthetho Wezokuphathwa Kobunikazi Bengxenye Yesakhiwo.

2.15 Isigatshana somthetho 15

2.15.1 Isigatshana somthetho 15 sihlose ukuchibiyela isigaba 54 soMthetho. UMkhandlu Weziphathimandla Zenhlangano Yezomthetho yaseRiphabhulikhi yaseNingizimu Afrika, phecelezi i-*Executive Council of the Law Society of the Republic of South Africa* ('LSSA') uphakamisa igama lomuntu oyedwa ongungoti wenqubo yokudluliswa komhlaba usuka kumnikazi uya komunye umuntu ukuze

aqokwe nguNgqongqoshe njengelungu leBhodi Elilawula Izakhiwo Ezinobunikazi Obungaphansi Kwabanikazi Abahlukene. Kodwa-ke, i-LSSA imelwe ngongoti bokudluliswa komhlaba ababili kwiBhodi Yezigcina-marekhodi Amatayitela esungulwe ngokwesigaba 9 soMthetho Wezigcina-marekhodi Amatayitela. Ukuchitshiyelwa kwesigaba 54(2)(c)(i), ngaphansi kwesigaba somthetho 15(a) soMthethosivivinywa kuyadingeka futhi kuhambisana nezimiselo zesigaba 9 zoMthetho Wezigcina-marekhodi Amatayitela.

2.15.2 Kunesidingo sokuthi ummeleli webhodi abe nolwazi oluphathekayo maqondana nezindaba eziphatelene nokubhaliswa kwezakhiwo ezingaphansi kobunikazi obuhlukene kanye nokuvulwa kwerejista yezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene. Ukufakwa kwesigaba 54(2)(c)(vii) njengoba kuhrongozwe kwisigaba somthetho 15(c) kuhloswe ngakho ukubhekana nalolu daba ngokuhlinzekela ukuqokwa njengelungu lebhodi kombhalisi-matayitela, iphini lombhalisi-matayitela, noma umsizi wombhalisi-matayitela onolwazi oluphathekayo oludingekayo. Isichibiyelo sihambisana futhi nezimiselo zesigaba 9 soMthetho Wezigcina-marekhodi Amatayitela.

2.15.3 Isigaba 54(2)(c)(i) soMthetho sibhekise kuMkhandlu Weziphatimandla Wenhlangano Yezomthetho. Isigaba 118 soMthetho Wezomsebenzi Womthetho, wezi-2014 (uMthetho ongunombolo 28 wezi-2014) (“LPA”), saqala ukusebenza mhla lu-1 kuLwezi wezi-2018. Isigaba 4 se-LPA sasungula uMkhandlu Wezomsebenzi Wezomthetho waseNingizimu Afrika, onhloso yawo ibandakanya ukugqugquzelwa nokuvikelwa kwezintshisekelo-sidingo zomphakathi kanye nokulawula bonke abasebenzi bezomthetho. Isigaba 118 se-LPA sihlinzekela ukuhunyushwa kanye nokubhekisela emithethweni ethile, ngokuhambisana nezimiselo ze-LPA. Isigaba 118(e) se-LPA siyalela futhi ukuthi uma kukhulunywa ngeNhlango Yezomthetho yaseNingizimu Afrika kunoma yimuphi umthetho osuqediwe ongasasebenzi noma osuphelisiwe ngokufakwa kwe-LPA esikhundleni sawo kumele kuthathwe ngokuthi lokho kusho uMkhandlu Wezomsebenzi Wezomthetho waseNingizimu Afrika. Nakuba uMthetho ungaqedwanga yi-LPA, thina siwaguqulile

amagama, esikhundleni soMkhandlu Weziphathimandla Zenhlangano Yezomthetho safaka uMkhandlu Wezomsebenzi Wezomthetho waseNingizimu Afrika njengoba wasungulwa kwi-LPA.

2.15.4. Isigatshana somthetho 15(b) sihlose ukuchibiyela isigaba 54(2)(c) soMthetho ukuze kususwe isidingo sokuthi ibhodi libandakanye abantu ababili abanolwazi olukhethekile lwezikimu zentuthuko zezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene. Lesi sidingo asisadingeki njengoba uMthetho Wezokuphathwa Kobunikazi Bengxenye Yesakhiwo, wezi-2011 (uMthetho ongunombolo 8 wezi-2011) manje sekuyiwona olawula futhi uphathe izikimu zezakhiwo ezinobunikazi obungaphansi kwabanikazi abahlukene.

2.15.5. Imibandela eqondene nokuqokwa kwamalungu ebhodi kumele futhi isebenze nasekuqokweni kwamalungu abambela amalungu ebhodi lapho engekho. Ukufakwa kwesigaba 54(9A) njengoba kuhlongoziwe kwisigatshana somthetho 15(d) kuyisinyathelo esidingekayo.

2.16 Isigatshana somthetho 16

Isigatshana somthetho 16 sihlose ukuhlinzekela ukwengezwa kwesigaba 55(2) ukuze kuhlinzekelwe ukuthi iMithethonqubo ishicilelwe *kuSomqulu Kahulumeni* okungenani kusasele inyanga eyodwa ngaphambi kokufika kosuku olushiwo kwisaziso esifanelekile njengosuku lokuqala kokusebenza kwayo.

2.17 Isigatshana somthetho 17

Isigatshana somthetho 17 siqukethe isihloko esifushane.

3. IMITHELELA YEZEZIMALI PHEZU KOMBUSO

Ayikho.

4. IMINYANGO/IZINHLANGANO/ABANTU OKUBONISWANE NABO

Law Society of South Africa
 South African Council for the Architectural Profession
 South African Council for Professional and Technical Surveyors
 Banking Association of South Africa

Institute of Estate Agents of South Africa
National Association of Managing Agents

5. IMITHELELA EQONDENE NOMTHETHOSISEKELO

Ayikho.

6. IMITHELELA EQONDENE NEZOKUXHUMANA

Umsebenzi wokwazisa nokuxhumana uzokwenziwa nguMnyango Wezolimo, Izinguquko Kwezomhlaba kanye Nokuthuthukiswa Kwezindawo Zasemakhaya.

7. INQUBO YASEPHALAMENDE

7.1 IPhalamende yilona elethweswe igunya lokushaya imithetho kuzwelonke futhi yilona elinegunya ngokomthetho lokuphasisa lo Mthethosivivinywa.

7.2 Ecaleni elabe liphakathi kuka-*Tongane noNgqongqoshe Wezolimo Nezindaba Zomhlaba, lowezi-2010* (6) SA214 (CC), iNkantolo YoMthethosisekelo yanquma mayelana nesivivinyo okumele sisetshenziswe lapho kuhlukaniswa uMthethosivivinywa ngokwezigaba. Kwindinyana 70 yaleso sinqumo iNkantolo yathi "isivivinyo sokubheka nokuhlola ukuthi uMthethosivivinywa kumele uhlukaniswe kanjani kumele kube ngesibanzi kunaleso sokubheka nokuhlola amandla namagunya okwengamela ngokomthetho". INkantolo yathi isivivinyo sokuhlukaniswa ngokwezigaba sigxile kuzo zonke izimiselo zoMthethosisekelo ukuze kutholakale ukuthi ziyithinta kakhulu kangakanani imikhakha yokusebenza efakwe ohlwini olukuSheduli 4 yoMthethosisekelo, futhi asigxilile neze ekutholeni ukuthi yimuphi umthelela noma ukuhlobana ezinakho nomongo nengqikithi yalokhu noma yiziphi kulezi zimiselo.

7.3 Sizicubungulile zonke izimiselo zoMthethosivivinywa maqondana nalokho okushiwo kuSheduli 4 no 5 woMthethosisekelo, futhi sathola ukuthi inhloso nomthelela woMthethosivivinywa akubhekani ngendlela enohlonzwe nanoma yiziphi izindaba ezisohlwini olukuSheduli 4 no 5 woMthethosisekelo. Injongo-ngqangi yoMthethosivivinywa wukuhlinzekela ngokuthe xaxa izindaba eziphathelele nezakhiwo

ezinobunikazi obungaphansi kwabanikazi abahlukene kanye nokubhaliswa kwazo.

- 7.4** Abeluleki Bezomthetho boMbuso kanye noMnyango Wezolimo, Izinguquko Kwezomhlaba kanye Nokuthuthukiswa Kwezindawo Zasemakhaya banombono othi lo Mthethosivivinywa kumele ucutshungulwe ngokulandela inqubo eyasungulwa yisigaba 75 soMthethosisekelo, njengoba uMthethosivivinywa ungaphathelene kakhulu nezindaba ezisohlwini olukuSheduli 4 no 5 woMthethosisekelo.
- 7.5** Abeluleki Bezomthetho boMbuso kanye noMnyango Wezolimo, Izinguquko Kwezomhlaba kanye Nokuthuthukiswa Kwezindawo Zasemakhaya banombono othi asikho isidingo sokudlulisela lo Mthethosivivinywa eNdlini Kazwelonke Yabaholi Bendabuko ngokwesigaba 18(1)(a) soHlaka Lomthetho Wezobuholi Bendabuko Nokuphatha, wezi-2003 (uMthetho ongunombolo 41 wezi-2003), njengoba ungaqukethe izimiselo eziphathelene nomthetho wesintu noma amasiko emiphakathi yendabuko.

Iphrintwe yi-Creda Communications

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