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**ALTERNATIVE PROSPERITY'S
FINDINGS AND RECOMMENDATIONS ON DISTELL DEVELOPMENT TRUST'S BROAD-BASED
OWNERSHIP SCHEME ("B-BOS")**

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1. SCOPE

The scope of the work was to verify whether the DISTELL DEVELOPMENT TRUST complies with the requirements of a Broad Based Ownership Scheme (B-BOS) as set out in Code 100 of the Department of Trade and Industry's Broad-based Black Economic Empowerment (B-BBEE) Codes of Good Practice¹. (See appendix A for B-BOS rules).

This report is a **management letter that gives feedback on our findings** as per the Independent Competent Person's Report to the management of the trust and does not in itself constitute an Independent Competent Person's report

Our reports are limited to verify whether the DISTELL DEVELOPMENT TRUST complies with the requirements of a B-BOS only and no opinion is expressed on the nature or terms of any ownership transaction entered into by DISTELL DEVELOPMENT TRUST with any party.

2. VERIFICATION METHODOLOGY

Our verification work on the DISTELL DEVELOPMENT TRUST included:

- A review of the founding documents to ensure compliance with B-BOS rules;
- A review of the **financial statements**²;
- A review of availability of statutory documents and financial statements to beneficiaries;
- Review of the composition of fiduciaries;
- Calculation of management fees as defined for a B-BOS to ensure that management fees do not exceed 15%;
- Determine if at least 85% of the value of benefits allocated accrued to black people;
- Determine the value of benefits allocated accrued to black women; and
- A review of the operational capacity of the B-BOS.

¹ The *Codes of Good Practice on Broad-Based Black Economic Empowerment*, issued on 11/10/2013, as per section 9(1) of the *Broad-Based Black Economic Empowerment Act (53/2003)*.

² *At the time of the report, the signed financial statements were not available. The financial statements provided to Alternative Prosperity are the draft financial statements that are under audit at the time of the report. The draft financial statements were used to verify that management fees do not exceed 15% and that 85% of the benefits allocated to the scheme accrued to black people.*

3. FINDINGS AND RECOMMENDATIONS

This section discusses findings around statutory and operations compliance structures pertaining to requirements for a B-BOS as per Annexure 100(B) of the BEE codes. See Annexure A for list of requirements. No non-compliance issues has been found.

	No non-compliances noted.
	Compliant to requirement, but additional action recommended.
	Watch point

In our view, a risk area that the trustees should be aware of is in the rule that “The constitution of the scheme must define the Participants and the proportion of their claim to receive distributions” as discussed in section 3.3 below. Currently the Foundation complies with the requirement as it is phrased in the Codes but **recent comments from the DTI indicates that a broad definition of beneficiaries may be a risk area for BBOS in future and that they want to see specific beneficiaries named in statutory documents.** This is not a formal requirement yet, but is a DTI issue management should take note of. The largest beneficiary of the trust, Impumelelo would struggle to name all its beneficiaries due to the nature of its activities, which lends itself to benefit parts of society rather than identifiable beneficiaries.

	REQUIREMENT	FINDING	RECOMMENDATION
3.1	<p>The management fees of the scheme must not exceed 15%:</p> <p><i>Management fees are defined in the generic codes as “economic interest received by a BBOS in any year less the amounts distributed or applied to beneficiaries and the amounts reserved for future distribution or application”.</i></p> <p><i>Economic interest is defined as “a claim against an Entity representing a return on ownership in the entity similar in right to a dividend right”</i></p>	<p>The principle is entrenched in the trust deed as per section 22.1.</p> <p>The management fees of the trust did not exceed 15% in 2016</p>	<p>Minute a decision by the trustees at each year-end of the amount of the surplus for that year that is to be allocated to projects/beneficiaries in future as required in section 22.1.</p> <p>For example:</p> <p>“In 2016 the trust had a surplus of R5,979,245. At least 85% of these funds is to be reserved for distribution in future financial years, as oppose to the management fees of the trust.”</p>
3.2	<p>The constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application.</p>	<p>The rules for governing economic interest is adequately captured in trust deed and more specifically in in S22.1 and 24.3.</p>	
3.3	<p>The constitution of the scheme must define the Participants and the proportion of their claim to receive distributions. The fiduciaries should have no discretion over this.</p>	<p>Adequately captured in 2.6.4 and 2.6.5 of trust deed.</p> <p>No exceptions noted.</p> <p>Fiduciaries have not discretion as to the fact that they must distribute to at least 85% black people. The rights of black peoples is also protected in the amendment of the trust deed as per section 28.</p>	

	REQUIREMENT	FINDING	RECOMMENDATION
3.4	At least 85% of the value of benefits allocated by the scheme must accrue to Black people.	<p>Adequately captured in the trust deed. We've confirmed compliance through:</p> <ul style="list-style-type: none"> • Testing samples of all project contributions made up to March 2017 • Review contracts • Review management reports • Review and requested confirmation of black beneficiaries <p>We confirmed that at least 95% of the value of benefits, allocated by the DISTELL DEVELOPMENT TRUST accrues to black people and at least 55% accrues to black women.</p>	<p>Black female beneficiaries:</p> <p>Upon contracting with any partners, the DDT should agree reporting measures with regards to black beneficiaries and the gender of beneficiaries. DDT should request partners to provide independent reports in this regards.</p> <p>It is critical to agree these measures upfront and confirm the beneficiary status of partners before committing funding.</p> <p>Branding:</p> <p>The DDT should ensure that any projects sponsored by the DDT should be branded only as sponsored by the DDT and cannot be branded sponsored by Distell (unless paid for separately by Distell's marketing).</p>
3.5	At least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme.	<p>According to the Masters certificate dated 7 May 2015, the trustees are:</p> <p><u>DC Marsden</u></p> <p><u>L Svenson</u></p> <p>L Malan</p> <p><u>GP Dingaan</u></p> <p>VC de Vries</p>	



	REQUIREMENT	FINDING	RECOMMENDATION
		<p>We confirmed through discussions with management and desktop research that DC Marsden, L Svenson and GP Dingaana are deemed to be the independent directors.</p> <p>VC de Vries and L Malan is not Independent being employees of the DDT / Distell Ltd. We agree that they are not independent to the DDT.</p> <p>DC Marsden (Head business transformation and public affairs) and GP Dingaana (Investment executive) are involved with Wiphold, the previous BEE partner and current shareholder of Distell Group. The shareholding of Wiphold in Distell is not significant. We agree that DC Marsden is independent.</p> <p>GP Dingaana is an Independent Director on the Board of Distell https://www.distell.co.za/investor-centre/directorate-and-executive/</p> <p>It is our view that an individual that is an independent director of Distell will also be an independent director of the BBOS, therefore <u>we agree that GP Dingaana is independent.</u></p> <p>D Marsden is not employed by on the board of Distell. We did not find evidence to suggest that she is not an independent trustee.</p> <p>L Svenson is amongst other also a Director of Impumelelo SI Enterprise Consulting Service (Pty) Ltd, a partner organization of</p>	

	REQUIREMENT	FINDING	RECOMMENDATION
		<p>Impumelelo NPO. Impumelelo received 54% of the project funds distributed to date by DDT.</p> <p>https://www.impumelelosi.com/about</p> <p>We've confirmed with management of both the DDT and Impumelelo that L Svenson's involvement with Impumelelo is based on her involvement with the DDT and has happened as a result of the Sponsorship and not the other way around.</p> <p>In our view L Svenson is an independent trustee of the DDT.</p>	
3.6	At least 50% of the fiduciaries of the scheme must be Black people and at least 25% must be Black women.	<p>No exceptions noted.</p> <p>66.67% of the trustees are black, being De Vries, Dingaana and Svenson, with both Dingaana and Svenson also being female (40%).</p>	
3.7	The chairperson of the scheme must be independent.	<p>L Svenson is the chairman, as elected on 18 August 2015, subsequent to this date she also chaired the meetings.</p> <p>As per 1.5 discussed above Mrs Svenson is deemed to be independent.</p>	
3.8	The constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar (amended codes).	<p>Section 25 of trust deed.</p> <p>According to management they had no requests for other languages than English to date.</p>	
3.9	The scheme fiduciaries must present the financial reports of the scheme	10.3.2. of trust deed clearly states that trustees should present the statements annually to the beneficiaries.	

	REQUIREMENT	FINDING	RECOMMENDATION
	to Participants yearly at an annual general meeting of the scheme (amended codes).	An AGM with beneficiaries took place on 22 June 2017. The agenda included discussion of the latest annual financial statements.	
3.10	On winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to the beneficiaries or an entity with similar objectives.	24.3 of trust deed. No exceptions noted	
3.11	Other	<p>Unclear if the Foundation is registered as a PBO yet. A PBO that is the beneficial owner of a dividend is exempt from dividends tax under section 64F(1)(c).</p> <p>According to the financials dividend tax was paid as follows:</p> <p>2014 R612,600 2015 R1,356,470 2016 R1,404,205</p>	<p>This is not a B-BBEE compliance issue, but we'd suggest that the DDT finalise registration as PBO as a matter of urgency.</p> <p>A PBO is exempt from paying dividend tax.</p>
		<p>Distell, as the Founder, has the power to control the appointment of trustees (Section 8 of trust deed) and Distell also has the power to recall any trustee from office.</p> <p>This is not a non-compliance, but if used recklessly may carry reputational risk for Distell and the DDT on the perceived independence of the trust.</p> <p>As a mitigating factor the trustee minutes shows evidence that the current trustees are involved in nomination of new trustees to the</p>	

	REQUIREMENT	FINDING	RECOMMENDATION
		<p>board and we found no evidence that Distell is using this power to frustrate the objectives of the trust.</p>	
		<p>In specified circumstances, the trust deed can be amended by written agreement of the Founder and all of the Trustees. Refer section 28.</p> <p>The circumstances in which the trust deed can be amended relates to preserving the nature of the trust as a vehicle for BEE benefaction, and the fact that the founder and all of the trustees needs to be in agreement leads us to conclude that the rights of the black beneficiaries are sufficiently protected.</p>	



APPENDIX A: List of rules for B-BOS requirements³ reviewed

1. The management fees of the scheme must not exceed 15%;
2. The constitution of the scheme must record the rules governing any portion of Economic Interest received and reserved for future distribution or application;
3. The constitution of the scheme must define the Participants and the proportion of their claim to receive distributions;
 - a. a written record of the name of the Participants or the use of a defined class of natural person satisfies the requirement for identification
 - b. a written record of fixed percentages of claim or the use of a formula for calculating claims satisfies the need for defining proportion of benefit; and
 - c. the fiduciaries of the scheme must have no discretion on the above mentioned terms
4. At least 85% of the value of benefits allocated by the scheme must accrue to Black people;
5. At least 50% of the fiduciaries of the scheme must be independent persons having no employment with or direct or indirect beneficial interest in the scheme;
6. At least 50% of the fiduciaries of the scheme must be Black people and at least 25% must be Black women;
7. The chairperson of the scheme must be independent;
8. The constitution, or other relevant statutory documents, of the scheme must be available, on request, to any Participant in an official language in which that person is familiar;
9. The scheme fiduciaries must present the financial reports of the scheme to Participants yearly at an annual general meeting of the scheme; and
10. On winding-up or termination of the scheme, all accumulated Economic Interest must be transferred to the beneficiaries or an entity with similar objectives.
11. A track-record of operating as a Broad-Based Ownership Scheme , or in the absence of such a track-record demonstrable evidence of full operational capacity to operate as a Broad-Based Ownership Scheme; and
12. Operational capacity must be evidenced by suitably qualified and experienced staff in sufficient number, experienced professional advisors, operating premises, and all other necessary requirements for operating a business.

³ Rules of a B-BOS set out in Code 100 of the Codes of Good Practice on Broad-Based Black Economic Empowerment gazetted on 11/10/2012 under the Broad-Based Black Economic Empowerment Act (53/2003).