

**NOTICE 1664 OF 2009****DEPARTMENT OF TRADE AND INDUSTRY****COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)****COMPANIES REGULATIONS PURSUANT TO THE  
COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)**

I, Dr Rob Davies, Minister of Trade and Industry, pursuant to the signing of the Companies Act, 2008 by the President, hereby give notice in terms of section 223 of the Companies Act, 2008, as follows:

1. The Companies Regulations, 2010 are hereby published for public comment with effect from date of publication to 01 March 2010.
2. The Regulations provides for implementing Chapters of the Companies Act such as, Accountability and Transparency, Business Rescue, Par Value Shares, Social and Ethics Committee, Company Accounting Records, Financial Reporting Standards, Companies to be audited, Independent Reviews (Lesser standard than the audit) and Annual Returns and Discretionary Audit.
3. Members of the public are hereby requested to send their comments to Mr. MacDonald Netshitenzhe at MNetshitenzhe@thedti.gov.za or Fax (012) 394 2506

**DR ROB DAVIES, MP**

**MINISTER OF TRADE AND INDUSTRY**

**DATE:...../...../ 2009**

# **COMPANIES REGULATIONS, 2010**

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# COMPANIES REGULATIONS, 2010

## Chapter 1 - General Provisions

### Part A – Interpretation

#### 1. Short title

*Authority: s. 223 (1)(d)(ii)*

These Regulations may be cited as the *Companies Regulations, 2010*.

#### 2. Definitions

*Authority: s. 223 (1)(d)(ii)*

In these Regulations, unless the context indicates otherwise -

- (a) “certified copy” means a copy of a document certified by a Commissioner of Oaths, or electronically certified in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (b) “High Court Rules” means the Rules Regulating the Conduct of the Several Provincial and Local Divisions of the High Court of South Africa, published by Government Notice R48 in Government Gazette 999 of 12 January, 1965, as amended from time to time;
- (c) “initiating document”, depending on the context, means –
  - (i) an application submitted to a regulatory agency;
  - (ii) a complaint submitted to the Commission or the Panel;
  - (iii) a Complaint Referral by the Commission to the Tribunal; or
  - (iv) a Complaint referral directly by a complainant to the Tribunal;
- (d) “previous Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (e) “principal office” means the principal location within the Republic, as determined in terms of Regulation 176 (1), at which a regulatory agency conducts its operations and is accessible to the public;
- (f) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (g) “publish a notice” means to publicize information in accordance with Regulation 6;
- (h) “recording officer”, when used in relation to a particular matter, means either –

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Regulation 3

- (i) the officer of the Commission, Panel, Tribunal or the Board, as the case may be, appointed or designated in terms of Regulation 178; or
- (ii) any assistant or acting recording officer having responsibility for the particular matter;
- (i) “Regulation” includes any Table or Form included within or referred to in a Regulation;
- (j) “regulatory agency” means the Commission, the Panel, the Tribunal or the Board;
- (k) “senior officer” means, in the case of -
  - (i) the Commission, the Commissioner;
  - (ii) the Panel, the chairperson of the Panel, designated in terms of section 198;
  - (iii) the Tribunal, the chairperson the Tribunal, appointed in terms of section 194; or
  - (iv) the Board, the chairperson of the Board, appointed in terms of Regulation 130;
- (l) “the Act” means the Companies Act, 2008 (Act No. 71 of 2008), as amended from time to time; and
- (m) “the Board” means the Business Rescue Practices Regulatory Board” established by Regulation 129.

**3. Interpretation**

*Authority: s. 223 (1)(d)(ii)*

(1) In these Regulations -

- (a) a reference to a section by number refers to the corresponding section of the Act;
  - (b) a reference to a Regulation by number refers to the corresponding provision of these Regulations; and
  - (c) a reference to a sub-regulation or other partial Regulation by number refers to the corresponding clause of the Regulation in which the reference appears.
- (2) A word or expression that is defined in section 1, or elsewhere in the Act to the extent applicable in particular circumstances, bears the same meaning in these Regulations as in the Act.

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## Chapter 1 - General Provisions : Part A - Interpretation

## Regulation 3

- (3) If, with respect to a decision to be made by a juristic person other than a company in any particular matter -

- (a) a provision of the Act requires that the matter be determined by special resolution of that juristic person; and
- (b) neither the relevant law in terms of which that juristic person was incorporated, or the constituting document of that juristic person, defines or contemplates a special resolution

that provision of the Act must be regarded as requiring approval of that matter by the highest deliberative standard contemplated by the relevant law applicable to, and the constituting documents of, that juristic person.

- (4) To the extent that the content or effect of any particular provision of a company's Memorandum of Incorporation -

- (a) is required of the company in terms of any applicable public regulation, or the listing requirements of an exchange; and
- (b) incidentally has the effect of negating, restricting, limiting, qualifying, extending or otherwise altering the substance or effect of an unalterable provision of the Act,

that provision of the company's Memorandum of Incorporation must not be construed as being contrary to section 15 (1), read with the definition of "unalterable provision" in section 1.

- (5) If, as a consequence of the coming into effect of the Act and the repeal of the previous Act, a conflict, dispute or doubt arises within 18 months after the effective date concerning the particular manner or form in which, or time by which, a pre-existing company is required to -

- (a) prepare its annual financial statements, convene an annual general meeting, provide copies of its annual financial statements, any other document or any notice to its shareholders; or
- (b) file any particular document with the Commission; or
- (c) take any other particular action required in terms of the Act or its Memorandum of Incorporation,

the company may apply to the Tribunal for directions, and a member of the Tribunal may make an administrative order that is appropriate and reasonable in the circumstances.

- (6) For the purposes of the Act and these regulations, three or more persons are to be regarded as inter-related if any two of them are related, and one of those persons is related to the third, and so forth in an unbroken sequence.

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

Regulation 4

**Part B – Guidelines, Practice Notes, Forms, Notices and other documents**

**4. Issuing and Status of Practice Notes and Guidelines**

*Authority: s. 223 (1)(b) and (c)*

(1) In this Regulation,

- (a) “Guideline” means a document setting out recommended procedures, standards or forms reflecting a regulatory agency’s advice as to what constitutes best practice on a matter; and
- (b) “Practice Note” means a document setting out –
  - (i) the procedure that will be followed by a regulatory agency; or
  - (ii) a procedure to be followed when dealing with a regulatory agency, or
  - (iii) a regulatory agency’s interpretation of, or intended manner of applying, a provision of the Act or these Regulations

in a respect to a matter within the authority of that regulatory agency.

(2) The senior officer of a regulatory agency may -

- (a) issue a Guideline at any time by –
  - (i) publishing a notice of the Guideline to the general public in any generally circulated newspaper, on the regulatory agency’s web site, or but any similar means of providing information to the public generally; and
  - (ii) making a printed or electronic copy of the Guideline freely available to any person upon request; or
- (b) issue a Practice Note at any time by publishing it in the Gazette, and may amend or withdraw any such Practice Note at any time by subsequent notice in the Gazette.

- (3) A Guideline or Practice Note must be consistent with the Act and these Regulations.
- (4) A Guideline issued in terms of the Act or this regulation is not binding on the regulatory agency that issued it, or on any other person, regulatory authority, tribunal or court.
- (5) A Practice Note issued in terms of the Act or this regulation is binding on the regulatory authority that issued it until it is amended or withdrawn, as contemplated in sub-regulation (2)(b), but a practice note issued by –
  - (a) the Commission is not binding on the Tribunal or a court; or

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

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- (b) any other regulatory agency is not binding on a court.

**5. Forms and filing requirements**

*Authority: s. 223 (1)(b) and (d)(i)*

- (1) Whenever a document is required –

- (a) in terms of a section of the Act or a provision of these Regulations listed in column 1 of Table CR 1; and
- (b) for a purpose listed in column 2 of that Table,

the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that Table, and must be produced, delivered, or filed as the case may be subject to any conditions or requirements listed opposite that section number in column 4 of that Table.

- (2) If a regulatory authority has reasonable grounds for uncertainty whether a copy of a document to be filed is in fact unaltered, as contemplated in section 6 (7), the regulatory authority may require the person seeking to file that document to provide a certified copy of the document.

**6. Publishing of notices**

Except as specifically required elsewhere in these regulations, a regulatory agency or person required to publish a notice in terms of the Act or these regulations must –

- (a) place an advertisement, setting out the notice, in a daily newspaper circulating to the general public within each province in which the relevant company routinely conducts its business activities; and
- (b) if the publication is required by a company, it must conspicuously post a copy of the notice at its principal places of conducting its business activities; and
- (c) if the publication is required by regulatory agency or a company, it must conspicuously post a copy of the notice -
- (i) on its website, if it has one; and
- (ii) on SENS, if it is a listed company.

**7. Notice of availability of documents**

*Authority: s. 6 (11)(b)(ii)*

- (1) A notice of the availability of a document, record or statement, as contemplated in section 6 (11)(b), must -
- (a) be in writing and delivered to each intended recipient of the document, record or statement either;



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Regulation 8

- (i) in paper form at the intended recipient's last known delivery address; or
    - (ii) in electronic form at their last known electronic mail address; and
  - (b) set out clearly -
    - (i) the title of the document, record or statement the availability of which is being advertised;
    - (ii) the extent of the period during which the document, record or statement will remain available;
    - (iii) the means by which the the document, record or statement may be acquired by a recipient of the notice; and
  - (c) include a statement that succinctly summarizes the purpose of the document, record or statement.
- (2) A document, record or statement the availability of which is being advertised –
- (a) must be made available to intended recipients in paper copy, or in a printed version of an electronic original produced by or on behalf of the company on demand by an intended recipient; and
  - (b) may in addition be made available to intended recipients to request and obtain by electronic transmission in a manner and form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

**8. Delivery of documents**

*Authority: s. 223 (1)(b) and (d)(i)*

- (1) A notice or document to be delivered for any purpose contemplated in the Act or these Regulations may be delivered in any manner set out in Table CR 3.
- (2) Subject to sub-regulation (4), a document delivered by a method listed in the second column of Table CR 3 will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table.
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these Regulations,
  - (a) if a regulatory agency is required to deliver the document, the recording officer may apply to the High Court for an order of substituted service; and
  - (b) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Regulation 176 (3), if the date and time for the delivery of a document referred to in Table CR 3 to a regulatory agency is outside of the office hours of that

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Regulation 8

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regulatory agency as set out in Regulation 176 (2) that document will be deemed to have been delivered on the next business day.

- (5) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -
- (a) The name, address, and telephone number of the sender;
  - (b) The name of the person to whom it is addressed, and the name of that person's attorney, if it is being sent to the attorney for a person;
  - (c) The date and time of the transmission;
  - (d) The total number of pages sent, including the cover page; and
  - (e) The name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 9

**Chapter 2 - Formation, Administration and Dissolution of Companies**

**Part A – Reservation and Registration of Company Names**

**9. Company names**

*Authority: s. 223 (1)(d)(ii)*

(1) In this regulation -

(a) “company concerned”, when used in relation to –

(i) an application to reserve a name –

(aa) means an entity that is contemplated, but not yet incorporated; or

(bb) in the case of an application filed by or in respect of an existing company contemplating changing its name, means that company;

(ii) a notice of incorporation, means the company being incorporated; or

(iii) a notice of Amendment of a Memorandum of Incorporation, means the company filing the notice; and

(b) “proposed company name” means a name that appears on -

(i) an application for name reservation; or

(ii) either

(aa) a Notice of Incorporation; or

(bb) a Notice of Amendment of a company’s Memorandum of Incorporation

irrespective whether the name has been reserved before the filing of any such notice.

(2) Irrespective of the language of any words used in a proposed company name –

(a) every word comprising part of the name must be expressed using the alphabet that is commonly used for writing in any one of the official languages of the Republic; and

(b) every number forming part of the name must be expressed either in words or in Arabic or Roman numerals.

(3) If a proposed company name contains any word or words in any language that is not an official language of the Republic, the application or notice filed to reserve or use that name must include either –

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 10

- (a) a certified translation of that word, or those words, into an official language of the Republic; or
  - (b) a declaration that the word falls, or the words fall, within the category of words contemplated in sub-regulation (4).
- (4) If a proposed company name contains any word, or combination of words, in any language that constitute -
- (a) a registered trade mark; or
  - (b) a mark in respect of which an application has been filed in the Republic for registration as a trade mark; or
  - (c) a well known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993)

the application or notice filed to reserve or use that name must include satisfactory evidence that the applicant or the company to use that name is entitled to use that word or combination of words.

- (5) If a proposed company name -
- (a) is similar to the name of another company, close corporation or co-operative, and is claimed to be justifiable on the grounds that –
    - (i) the company to use that name; and
    - (ii) the other company, close corporation or co-operative, as the case may be,are both part of a common group of companies; or
  - (b) falls within any category of names restricted in terms of section 11 (2) (b), and is claimed to be justifiable on the grounds that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by, endorsed by, owned by, operated by, conducted by, or enjoys the patronage of, as the case may be, a person or entity contemplated in that section,

the application or notice to use that name must include satisfactory evidence supporting that claim.

**Authority: s. 11 (4)**

- (6) In addition to the symbols set out in section 11(1)(a)(ii), the name of a company may include the following symbols: @, - .

**10. Reservation of company names**

**Authority: s. 12**

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Regulation 10

- (1) An application to reserve a name in terms of section 12 (1) must be made in Form CoR 10.1, and must be accompanied by -
  - (a) the fee set out in Table CR 2; and
  - (b) any relevant documentation or evidence required in terms of Regulation 9.
- (2) An application to extend the reservation of a name, as contemplated in section 12 (4), must be made in Form CoR 10.2, and must be accompanied by -
  - (a) the fee set out in Table CR 2B;
  - (b) a statement by the applicant setting out the reasons why the name has not been used within the time that it has been reserved, and why it is anticipated that the name will be used within the period of the extension; and
  - (c) in the case of a name in respect of which satisfactory evidence of any facts was required in terms of Regulation 9 when the name was first reserved, further satisfactory evidence that the relevant circumstances have not altered.
- (3) The Commission must issue to the applicant –
  - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9, before determining whether to accept the application.
  - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application to reserve a name, or extend the reservation of a name; or
  - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if -
    - (i) the form of the name does not satisfy any requirements set out in section 11, or Regulation 9 (1); or
    - (ii) use of that name by the applicant is prohibited in terms of section 12 (2).
- (4) If the Commission has accepted the reservation of a name that the Commission considers may be contestable on any ground contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue–
  - (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
  - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7, to the South African Human Rights Commission and to the applicant if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

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Regulation 11

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**11. Defensive reservation of names**

*Authority: s. 12 (9)*

- (1) An application for a defensive reservation of a name must be –
  - (a) made in Form CoR 11.1; and
  - (b) accompanied by –
    - (i) the fee set out in Table CR 2B; and
    - (ii) evidence that the applicant has a direct and material interest in the name.
- (2) An application to renew a defensive reservation of a name must be –
  - (a) made in Form CoR 11.2; and
  - (b) must be accompanied by –
    - (i) the fee set out in Table CR 2B; and
    - (ii) evidence that the applicant continues to have a direct and material interest in the name.
- (3) A defensive name reservation may be transferred to another person, in accordance with Regulation 12.
- (4) The Commission must issue to the applicant –
  - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of sub-regulation (1)(b)(ii) or (2)(b)(ii) before determining whether to accept the application;
  - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application for defensive reservation of a name, or to renew the defensive reservation of a name; or
  - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if –
    - (i) the form of the name does not satisfy the requirements of section 11, or Regulation 9 (1); or
    - (ii) the use of that name by the applicant is prohibited in terms of section 12 (2).

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Regulation 12-r13

- (5) If the Commission has accepted the defensive reservation of a name that may be contestable on any grounds contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue –
- (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
  - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7 to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

**12. Transfer of reserved names**

*Authority s. 12 (5)*

- (1) An application to transfer the reservation, or defensive reservation, of a name to another person must –
- (a) be made in Form CoR 12.1, and accompanied by the fee set out in Table CR 2B; and
  - (b) in the case of a -
    - (i) a name reservation in respect of which satisfactory evidence of any facts was required in terms of Regulation 9, must be accompanied by satisfactory evidence of the comparable facts in relation to the transferee; or
    - (ii) defensive reservation, must be accompanied by satisfactory evidence that the transferee has a direct and material interest in the name.
- (2) The Commission must issue to the applicant –
- (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9 or sub-regulation (1)(b)(ii); or
  - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted the Notice of Transfer of the name; or
  - (c) a Notice of Refusal of a Name Transfer in Form CoR 12.2 if the use of that name by the transferee is prohibited on the grounds that the evidence of matters contemplated in Regulation 9 or sub-regulation (1)(b)(ii) is unsatisfactory.

**13. Disputes concerning rejected applications**

*Authority s. 156 (b)*

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Regulation 14

- (1) A person to whom a Notice of Refusal to reserve a name, in Form CoR 10.6, or a Notice of Refusal of a Name Transfer, in Form CoR 12.2, is delivered in terms of Regulation 10, 11 or 12, may apply to the Tribunal in Form CTR 147 for a determination whether the name satisfies the requirements of section 11, or satisfies the requirements for transfer, as the case may be.
- (2) An application in terms of sub-regulation (1) may be made -
  - (a) within 20 business days after the date of a notice contemplated in sub-regulation (1); or
  - (b) on a later date, if so permitted by the Tribunal, on good cause shown.
- (3) After considering an application made in terms of sub-regulation (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Tribunal -
  - (a) must make a determination whether that name satisfies the requirements of section 11, or the requirements for a transfer of name, as the case may be; and
  - (b) may make an administrative order –
    - (i) confirming or varying, in whole or in part, the notice issued by the Commission; or
    - (ii) directing the Commission to -
      - (aa) reserve a name for the applicant in terms of section 12;
      - (bb) transfer a reserved name.
- (4) Within 20 business days after receiving a notice or a decision issued by the Tribunal in terms of this regulation, an incorporator of a company, a company, a person who received a notice contemplated in sub-regulation (1), an applicant under sub-regulation (1) or any other person with an interest in the name or proposed name that is the subject of the application, as the case may be, may apply to a court to review the decision.

**14. Abuse of name reservation system**

*Authority: s. 12 (6)*

- (1) A notice contemplated in section 12 (6), must be issued by the Commission in form CoR 14, and must –
  - (a) specify clearly the purpose of the notice in terms of the items listed in section 12 (6)(a) to (d); and
  - (b) set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.



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Regulation 14

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- (2) If a person who has received a notice in form CoR 14 to show cause why a name should be reserved, continue to be reserved or why a reservation should be transferred, as contemplated in section 12 (6)(a) –
- (a) fails to respond to that notice within 40 business days after receiving it, the Commission must issue a notice in –
- (i) form CoR 10.6, rejecting the application to reserve the name, or
- (ii) A further form CoR 14, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.
- (b) provides information to the Commission within 40 business days after receiving it, the Commission, after considering that information, must issue either –
- (i) a notice in form CoR 10.5 accepting the reservation, extension or transfer as the case may be; or
- (ii) a further notice in form CoR 14, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.
- (3) Regulation 13, read with the changes required by the context, applies with respect to any notice in form CoR 14 issued in terms of this regulation, other than a notice requiring a party to show cause, as contemplated in section 12 (6)(a).

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Regulation 15

**Part B – Incorporation and Legal Status of Companies**

**15. Notice of Incorporation**

*Authority: s. 13 (2), read with s. 223 (1)(d)(i)*

- (1) A Notice of Incorporation required in terms of section 13 must be filed in form CoR 15.1 and -
  - (a) must be accompanied by -
    - (i) the Memorandum of Incorporation of the company; and
    - (ii) the fee set out in Table CR 2B, subject to sub-regulation (2) and (4); and
  - (b) must stipulate whether the company's name will be -
    - (i) its registration number, as contemplated in section 11 (1)(b), in which case the applicable spaces for the name to be entered on form CoR 15.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission upon assignment of the registration number;
    - (ii) a name that has been reserved for use in terms of the Act, and which the incorporators are entitled to use, in which case the reservation number must be set out on form CoR 15.1; or
    - (iii) a name that has not been reserved in advance, in which case -
      - (aa) the applicable spaces for the name to be entered on form CoR 15.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission in accordance with sub-regulation (2);
      - (bb) the incorporators may include up to four alternative names on the Notice of Incorporation, listed in order of preference; and
      - (cc) Regulation 9 and 10, read with the changes required by the context, apply with respect to each name listed on the notice.
- (2) If the Notice of Incorporation indicates that the company is to be known by its registration number, or by a name that has been reserved in advance, the Commission must reduce the filing fee for the Notice of Incorporation by an amount equivalent to the fee for an application for name reservation.
- (3) If the Notice of Incorporation indicates that the company is to be known by a name that has not been reserved in advance -
  - (a) the Commission must consider each name entered on form CoR 15.1 in the listed order of preference, and must assign to the company as its name -

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Regulation 16

- (i) the first of those names that proves to be acceptable in terms of the Act, if any; or
    - (ii) the registration number, in the manner contemplated in section 14 (2)(b), if none of the listed names is acceptable; and
  - (b) sections 11 and 12 and Regulations 9 and 10, each read with the changes required by the context, apply to the consideration of any such name by the Commission, as if the Commission were considering an application to reserve that name.
- (4) If, in terms of sub-regulation (3), the Commission is required to consider more than one name, the Commission may assess the company a surcharge in addition to the filing fee for the Notice of Incorporation, equivalent to the fee required on an application for reservation of a name, for each such additional name required to be considered.
  - (5) The Commission may reject a Notice of Incorporation in terms of section 13 (4) by issuing a notice to the incorporators in form CoR 15.2 and returning to them any documents or other material filed with the Notice of Incorporation.
  - (6) Regulation 13, read with the changes required by the context, applies with respect to any notice in form CoR 15.2 issued in terms of this regulation, or any notice issued by the Commission with respect to the name of the company, as contemplated in sub-regulation (3)(b) or in section 14 (2) and (3), read with sections 11 and 12, and regulations 9 and 10.
  - (7) The Registration Certificate issued by the Commission in terms of section 14 (1)(b) must be in form CoR 15.3.

**16. Memorandum of incorporation***Authority: s. 13 (1)(l) and s. 223 (1)(d)(i)*

- (1) The Memorandum of Incorporation of a company in the standard form contemplated in section 13 (1)(a)(i) must be in either form CoR 16.1A or CoR 16.1B.
- (2) At any time after the incorporation of a company, the company may substitute its Memorandum of Incorporation in standard form CoR 16.1A, with a Memorandum of Incorporation in standard form CoR 16.1B by filing, without charge –
  - (a) A Notice of Amendment in form CoR 16.2;
  - (b) A copy of the completed Memorandum of Incorporation in form CoR 16.1B; and
  - (c) a copy of a special resolution of the company approving the new form of Memorandum of Incorporation.

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Regulation 16

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- (3) Within 5 business days after an amendment to a company's Memorandum of Incorporation has been effected in any other manner contemplated in section 16 (1), the company must file a Notice of Amendment in form CoR 16.2, together with –
- (a) the relevant documents required by section 16 (7); and
  - (b) the fee set out in Table CR 2B, subject to any fee waiver provided for in the Act or these regulations.
- (4) If an amendment to a company's Memorandum of Incorporation includes an amendment to the name of the company, the date and time at which the Commission will have accepted the notice of amendment, as contemplated in section 16 (9), is the date and time at which the Commission issues a certificate of registration in the amended name of that company.
- (5) If an amendment to the Memorandum of Incorporation of a personal liability company has the effect of transforming that company into any other category of company, the Notice of Amendment must include satisfactory evidence that the company has taken reasonable steps to give at least 10 business days notice of the filing of the notice of amendment, and of its effect, to –
- (a) any professional or industry regulatory authority that has jurisdiction over the business activities carried on by the company; and
  - (b) all persons who –
    - (i) in their dealings with the company, may reasonably be considered to have acted in reliance upon the joint and several liability of the directors for the debts and liabilities of the company; or
    - (ii) may be adversely affected if the joint and several liability of the directors for the debts and liabilities of the company is terminated as a consequence of the amendment to the Notice of Incorporation.
- (6) A person who receives, or is entitled to receive, a notice in terms of sub-regulation (5) may apply to the Tribunal in form CTR 143 for an administrative order sufficient to protect the interests of that person.
- (7) Within 5 business days after publishing a notice of alteration of its Memorandum of Incorporation, as contemplated in section 17 (1)(a), the company must file a Notice of Alteration in form CoR 16.3.
- (8) A filed translation of a company's Memorandum of Incorporation must be accompanied by form CoR 16.4, which must include the sworn statement required by section 17 (4).
- (9) A consolidated revision of a company's Memorandum of Incorporation must be accompanied by form CoR 16.5, which must include a sworn statement, or a statement by an attorney or notary, as required by section 17 (6).

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Regulation 17-r18

- (10) A notice by the Commission requiring a company to file a consolidated revision of its Memorandum of Incorporation must be in form CoR 16.6.
- (11) If –
- (a) any shareholders of a pre-existing company have entered into an agreement of the type contemplated in section 15 (7); and
  - (b) any provision of that agreement is inconsistent with the company's Memorandum of Incorporation or this Act; and
  - (c) that agreement is in effect immediately before the effective date; and
  - (d) the company has filed a Notice of Shareholder Agreement in form CoR 16.7 within 20 business days after the effective date,

the provisions of Item 4 (2), (3) and (4) of Schedule 5 of the Act, read with the changes required by the context, apply with respect to any such provision of that agreement in relation to the Memorandum of Incorporation, and the Act.

**17. Rules of a company**

*Authority: s. 15 (3)(b), read with s 223*

- (1) Rules of a company contemplated in section 15 (3) must be filed with form CoR 17.1 within 20 business days after being published by the company in terms of section 15 (3)(a).
- (2) Within 5 business days after any rules of a company have been put to a ratification vote in terms of section 15 (4), the company must file a Notice of Result of Ratification Vote in form CoR 17.2 indicating clearly whether the rules have been ratified or rejected.
- (3) Within 5 business days after any rules of a company have been amended, altered or repealed the company must file a Notice of Amendment, Alteration or Repeal of Company Rules in form CoR 17.3 indicating clearly the extent and effect of the change.
- (4) Any failure to ratify the rules of a company does not affect the validity of anything done in terms of those rules during the period that they had interim effect as provided in section 15 (4)(c)(i).

**18. Validity of company actions**

*Authority: s 223(1)(d)(ii)*

Proceedings contemplated in section 20 (4) or (5) must be commenced in the High Court, in accordance with the High Court Rules.

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Regulation 19-r21

## 19. Conversion of Close Corporations

*Authority: s 223(1)(d)(ii)*

- (1) A Notice of Conversion of a close corporation must be filed in form CoR 19, and must be accompanied by –
  - (a) a written statement of consent signed by members of the corporation holding, in aggregate, at least 75% of the members' interests in the corporation;
  - (b) a Memorandum of Incorporation; and
  - (c) the fee set out in Table CR 2B.
- (2) For greater certainty, the Commission must regard –
  - (a) the written and signed consents contemplated in sub-regulation (1)(a) as satisfying the requirement set out in Item 1 (2)(a) of Schedule 2 of the Act; and
  - (b) the Memorandum of Incorporation contemplated in sub-regulation (1)(b) as satisfying the requirement set out in Item 1 (2)(b) of Schedule 2 of the Act.
- (3) Regulation 15, read with the changes required by the context, applies to the filing and consideration of a Notice of Conversion of a close corporation.

## 20. Reckless trading

*Authority: s. 22 and 223 (1)(d)(ii)*

- (1) The Commission may issue a show cause notice contemplated in section 22 (2), in respect of any conduct mentioned in section 22(1)(a), at any time, in form CoR 20.1, which must clearly set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.
- (2) If a person who has received a notice in form CoR 20.1 provides information to the Commission within 20 business days after receiving the notice, the Commission, after considering that information, must issue either –
  - (a) a notice in form CoR 20.2 accepting the information, and confirming the company's right to continue carrying on its business activities; or
  - (b) a compliance notice, as contemplated in section 22 (3).

## 21. Trading in insolvent circumstances

*Authority: s.22 and 223 (1)(d)(ii)*

- (1) If, at any particular time, a company is trading in circumstances in which its liabilities exceed its assets, the company must file a notice to that effect in form CoR 21.1, and thereafter file quarterly renewals of that notice in form CoR 21.2, until such time as the company's assets equal or exceed its liabilities.

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Regulation 21

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- (2) Subject to sub-regulations (3) to (5), Regulation 20, read with the changes required by the context, applies with respect to conduct contemplated in section 22 (1)(b).
- (3) In the exercise of its discretion, in terms of section 22 (2), in respect of conduct contemplated in section 22 (1)(b), the Commission –
- (a) may not issue a notice in form CoR 20.1 as contemplated in that subsection if –
- (i) the amount by which the company's liabilities exceed its assets is less than or equal to the total of all amounts owed by the company–
- (aa) to its shareholders in terms of any shareholder loans or similar arrangements; or
- (bb) to any other person in terms of a secured loan, secured credit facility or similar arrangement; and
- (ii) it is reasonable in the circumstances to expect that the company will be able to meet its obligations as they fall due and payable; and
- (b) may otherwise issue a notice in form CoR 20.1 as contemplated in that section only if it is reasonable and justifiable to prevent the company from operating in the circumstances, having regard to, among other things, the following factors:
- (i) The potential for the company to trade out of insolvency;
- (ii) The extent to which the company's liabilities are –
- (aa) in terms of any state sponsored economic development or economic empowerment program, scheme or policy; or
- (bb) in the form of obligations to, or are guaranteed by, the state or a state owned entity.
- (4) The Commission must not refer an offence to the National Prosecuting Authority for prosecution of a company in terms of section 22 (1)(b), or for prosecution of any person in terms of section 214 (1)(c)(i) read with section 22 (1)(b), unless –
- (a) the Commission has first issued –
- (i) a notice in form CoR 20.1, in terms of section 22 (2) and sub-regulation (3) to the relevant company; and
- (ii) a compliance notice in terms of section 22 (3) to the relevant company; and
- (b) the company has failed to comply with the compliance notice contemplated in paragraph (a)(ii).

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Regulation 21

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(5) The Commission may not refer an offence to the National Prosecuting Authority for prosecution of a company in terms of both –

- (a) section 22 (1)(b), for trading in insolvent circumstances; and
- (b) section 214 (3) for failure to satisfy a compliance notice issued in terms of section 22 (3)

arising out of the same circumstances.



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Regulation 22-r24

**Part C – Transparency, accountability and integrity of companies**

**22. External Companies**

*Authority: s. 23*

- (1) An external company must register by filing a notice in form CoR 22.1, which must be accompanied by –
  - (a) the filing fee set out in Table CR 2B;
  - (b) a certified copy of the certificate of registration or comparable document issued by the jurisdiction in which the company was incorporated; and
  - (c) a statement setting out –
    - (i) the address of its principal office outside the Republic; and
    - (ii) the names of its directors at the time that it files form CoR 22.1;
  - (d) the address of its principal office in the Republic, as required by section 23 (3)(b)(i)(bb); and
  - (e) the name and address of any person within the Republic who has undertaken to accept service of documents on behalf of the external company.
- (2) The Commission must issue a registration certificate to each external company, in form CoR 22.2.

**23. Registered office of company**

*Authority: s 23*

A company or external company must notify the Commission of a change in its registered office by filing form CoR 23, indicating the effective date of the change, which must be a date after the date on which the notice is filed.

**24. Company records**

*Authority: s. 24, read with 223(1)(d)(ii)*

- (1) In addition to the requirements set out in section 24 (1)(b), a company must retain the following records indefinitely:
  - (a) its Memorandum of Incorporation, as amended from time to time;
  - (b) its Registration Certificate;
  - (c) its Register of Directors, subject to Regulation 24 (2); and
  - (d) its securities register, subject to Regulation 36 (6).

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Regulation 25-r26

- (2) A company must notify the Commission of a change in the location of any company records that are no longer located at its registered office by filing form CoR 24, indicating the effective date of the change, which must be a date after the date on which the notice is filed.

**25. Information to be kept concerning directors**

*Authority: s 24(5) and s 223 (1)(d)(ii)*

- (1) In addition to the information required by section 24 (5), a company's record of directors must include, with respect to each director of the company –
  - (a) the name and registration number of any company of which a person related to that director is a director or prescribed officer;
  - (b) the address for service for that director; and
  - (c) in the case of a company that is required to have an audit committee, the professional qualifications, if any, and previous experience of the director.
- (2) To give effect to the requirements set out in section 24 (3)(b), at any particular time, the record of directors of a company must include –
  - (a) with respect to each current director at that particular time, all of the information required in terms of section 24 (5) and sub-regulation (1); and
  - (b) with respect to any person who had been a director of the company at any time within the immediately preceding 7 years, but who is no longer a director of the company at that particular time, the information compiled in terms of section 24 (5) and sub-regulation (1), as of the date that person ceased to be a director.

**26. Access to company information**

*Authority: s. 26 (5) and s. 223 (1)(d)(ii)*

- (1) The right of access to the 'register of members' and 'register of directors' set out in section 26 (3) applies –
  - (a) in the case of a profit company, to —
    - (i) its securities register, in the manner contemplated in section 26 (1)(a), read with section 24 (4)(a) and section 50;
    - (ii) its register of directors in the manner contemplated in section 26 (1)(a), read with section 24 (3)(b) and Regulation 25; and
    - (iii) its register of secretaries and auditors, if applicable, in the manner contemplated in section 26 (1)(a), read with section 24 (4)(b) and section 85; and

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Regulation 26

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- (b) in the case of a non-profit company to –
    - (i) its register of members, required by Item 1 (9) of Schedule 1, if it has members; and
    - (ii) its register of directors in the manner contemplated in section 26 (1)(a), read with section 24 (3)(b) and Regulation 25.
  - (2) Any right of access of any person to any information contemplated in section 26 or in this regulation may be exercised only in accordance with -
    - (a) the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
    - (b) the provisions of section 26 (1)(c)(i); and
    - (c) sub-regulations (4) to (6).
  - (3) A right of access to any record held by a company is not perfected until –
    - (a) a request to exercise that right has been made to the company in terms of sub-regulation (4); and
    - (b) the right of access to the information has been confirmed in accordance with the Promotion of Access to Information Act, 2000.
  - (4) A person seeking to exercise a right of access to any record held by a company must make a written request, as contemplated in section 26 (1)(c), by delivering to the company –
    - (a) a completed Request for Access to Information in Form CoR 26; and
    - (b) any further documents or other material required in terms of the Promotion of Access to Information Act, 2000.
  - (5) A perfected right of access to any information held by a company may be exercised only during the company's normal business hours.
  - (6) A company may not charge a fee to a shareholder or, in the case of non-profit company, a member, of the company to inspect or copy a record contemplated in section 26 (3), read with sub-regulation (2).

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**27. Company accounting records**

*Authority: s. 27 and 28*

- (1) A company or external company must notify the Commission of a change in its financial year end by filing Form CoR 27.
- (2) A company must keep accounting records in an official language of the Republic, as necessary to provide an adequate information base to -
  - (a) enable the company to satisfy all reporting requirements applicable to it, as set out -
    - (i) in section 28 (1) read with section 29 (1);
    - (ii) in terms of any other law; and
    - (iii) any agreement to which the company is a party; and
  - (b) provide for the proper conduct of an audit, or independent review of its annual financial statements, as applicable for the particular company.
- (3) Without limiting the generality of sub-regulation (2), the accounting records of a company must include -
  - (a) a register of the company's assets and liabilities including, but not limited to, -
    - (i) a register of the company's non-current assets showing for each such asset -
      - (aa) the date the company acquired it, and the acquisition cost;
      - (bb) the date the company revalued it, if applicable, and the amount of the revaluation and, if it was revalued after the Act took effect, the basis of, and reason for, the revaluation;
      - (cc) the date the company disposed of it, once it has been disposed, and the value of the consideration received for it, and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred; and
      - (dd) a register of any loan by the company to a shareholder, director, prescribed officer or employee of the company, or to a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment; and
    - (ii) A record of any property held by the company -
      - (aa) in a fiduciary capacity; or

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- (bb) in any capacity or manner contemplated in section 65 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008); and
- (iii) A record of all liabilities and obligations of the company including, but not limited to -
  - (aa) a register of any loan to the company from a shareholder, director, prescribed officer or employee of the company, or from a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment;
  - (bb) a register of any guarantee granted by the company in respect of an obligation to a third party incurred by a shareholder, director, prescribed officer or employee of the company, or by a person related to any of them, including the amount guaranteed, the interest rate, the terms of re-payment, and the circumstances in which the company may be called upon to honour the guarantee;
  - (cc) a register of contractual obligations due to be performed in the future, recording for each such obligation the date on which it was undertaken, the person to whom the obligation is owed, the estimated cost of discharging the obligation and the date on which it is due to be discharged;
- (b) if the company trades in goods, a record of inventory and stock in trade, statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined; and
- (c) a record of the company's revenue and expenditures, including -
  - (i) daily records of all money received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash transactions, the names of the parties to the transactions to be identified;
  - (ii) daily records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
  - (iii) statements of every account maintained in a financial institution in the name of the company, or in any name under which the company carries on its activities, together with vouchers or other supporting documentation for all transactions recorded on any such statement.
- (4) In addition to the requirements set out above, a non profit company must maintain a register of revenue received from donations, grants, and member's fees, or in terms of any funding contracts or arrangements with any party, to the extent applicable.
- (5) The accounting records required to be kept by the Act and this regulation must be kept in such a manner as -

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- (a) to provide adequate precautions against -
    - (i) theft, loss or intentional or accidental damage or destruction; and
    - (ii) falsification; and
  - (b) to facilitate the discovery of any falsification.
- (6) If a company keeps any of its accounting records in electronic form, the company must –
- (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
  - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.
- (7) For greater certainty, the requirements of this regulation are in addition to, and not in substitution for, any applicable requirements to keep accounting records set out in terms of any other law, or any agreement to which the company is a party.

**28. Financial Reporting Standards**

*Authority: s. 29(4)*

- (1) In this Regulation, -
- (a) “IFRS” means the International Financial Reporting Standards as adopted from time to time by the International Accounting Standards Board or its successor body and approved for use in South Africa from time to time by the Council; and
  - (b) “IFRS for SMEs” means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the International Accounting Standards Board or its successor body and approved for use in South Africa from time to time by the Council.

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- (2) For any particular company, any financial statements contemplated in section 28 or 29 must comply with the applicable standards for that category of company as follows:

**State owned and Profit companies**

Category of Companies	Applicable Financial Reporting Standard
State owned companies.	IFRS, but in the case of any conflict with any requirements in terms of the Public Finance Management Act, the Public Audit Act, or other applicable national legislation, the latter prevails.
Public companies listed on an exchange.	IFRS, but in the case of any conflict with the applicable listing requirements of the relevant exchange, the latter prevails.
Public companies not listed on an exchange.	IFRS
Profit companies, other than public companies, that are required in terms of Regulation 29 (1)(a) to have their annual financial statements audited.	IFRS
Profit companies that are required in terms of Regulation 30 (2)(b) to have their annual financial statements independently reviewed.	IFRS for SMEs
Profit companies that are - (a) required in terms of Regulation 30(2)(a) to have their annual financial statements independently compiled and reported, or (b) exempted from having their annual financial statements audited or reviewed.	There is no prescribed Financial Reporting Standard

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**Non-Profit Companies**

Category of Companies	Applicable Financial Reporting Standard
Non profit companies that are required in terms of Regulation 29 (1)(a) to have their annual financial statements audited.	IFRS, but in the case of any conflict with any requirements in terms of the Public Finance Management Act, the Public Audit Act, or other applicable national legislation, the latter prevails.
Non profit companies that are required in terms of Regulation 29 (1)(b) to have their annual financial statements audited.	IFRS
Non profit companies that are required in terms of Regulation 30 (2)(b) to have their annual financial statements independently reviewed.	IFRS for SMEs
Non profit companies that are required in terms of Regulation 30 (2)(a) to have their annual financial statements independently compiled and reported.	There is no prescribed Financial Reporting Standard

**29. Categories of companies required to be audited**

*Authority: s. 30 (2), read with 30 (7)*

- (1) In addition to public companies and state owned companies, a company that falls within any of the following categories with respect to any particular financial year must have its annual financial statements for that financial year audited:
  - (a) Any profit or non-profit company if, in the ordinary course of its activities, it holds assets in a fiduciary capacity for a broad group of persons who are not related to the company, whether it does so –
    - (i) as its primary activity; or
    - (ii) incidental to its primary activity in any manner contemplated in terms of section 65 (2) of the Consumer Protection Act, 2008.
  - (b) Any non-profit company, if it –



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- (i) was incorporated -
    - (aa) directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company; or
    - (bb) primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity; or
  - (ii) it solicits or accepts donations from the general public and –
    - (aa) its assets, as reported on its annual financial statement for the immediately preceding year, exceeded R 60 Million; or
    - (bb) its current expenditures, as reported on its annual financial statement for the immediately preceding year, exceeded R120 million.
  - (c) Any profit or non-profit company that is subject to a compliance notice, in accordance with Regulation 32 (5)(b)(ii), requiring it to have its annual financial statement for that particular year audited.
- (2) Nothing in this regulation precludes a company -
- (a) that is required to prepare its financial statements to the standards of IFRS for SMEs from preparing its financial statements to the standards of IFRS instead; or
  - (b) that is not subject to any prescribed standards from preparing its financial statements to the standards of either IFRS or IFRS for SMEs.

**30. Independent reviews of annual financial statements**

*Authority: s. 30 (7)*

- (1) This Regulation applies to any company that, with respect to any particular financial year, is neither –
- (a) required, in terms of the Act or Regulation 29, to have its annual financial statements for that financial year audited; or
  - (b) exempted, in terms of section 30(2)(b)(ii), read with Regulation 31, from any requirement to have its annual financial statements for that year audited or reviewed.

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## Regulation 30

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- (2) Unless it is required by its Memorandum of Incorporation, or chooses voluntarily, to have its annual financial statements audited, a company to which this regulation applies must have its annual financial statements for a particular financial year -
- (a) independently compiled and reported if, on its annual financial statement for the immediately preceding year, –
    - (i) it reported assets totalling less than R 5 million; and
    - (ii) it reported annual revenue, from its business activities in the case of a profit company, or from donations, grants, membership fees and business activities in the case of a non-profit company, of less than R 20 million; or
  - (b) reviewed by an independent accounting professional -
    - (i) in accordance with the requirements of ISRE 2400, if –
      - (aa) the company's assets, as reported on its annual financial statements for the three immediately preceding financial years, averaged at least R100 million; or
      - (bb) the turnover of the company as calculated in accordance with Regulation 175, and as reported on its annual financial statements for the three immediately preceding financial years, averaged at least R200 million; or
    - (ii) in any other case, in accordance with the requirements of ISRS 4400, as promulgated from time to time.
- (3) For the purposes of this regulation -
- (a) If a company has been existence for a shorter time than contemplated in sub-regulation (2)(b), the calculation of the company's average assets and turnover must be made on the basis of the number of previous financial years for which the company has produced annual financial statements;
  - (b) "ISRE 2400" means the International Standards for Review Engagements, as promulgated from time to time;
  - (c) "ISRS 4400" means the International Standards for Independent Reviews, as promulgated from time to time;
  - (d) "independent accounting professional" when used with respect to any particular company, means a person who -
    - (i) is a member in good standing of a professional body that is a member of the International Federation of Accountants; and

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- (ii) does not have a personal financial interest in the company or a related or inter-related company; and
- (iii) is not -
  - (aa) involved in the day to day management of the company's business nor has been so involved at any time during the previous three financial years;
  - (bb) a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
  - (cc) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that professional is compromised by that relationship; and
- (iv) is not related to any person who falls within any of the criteria set out in clause (ii) or (iii).
- (e) "independently compiled and reported" means that the annual financial statements are prepared -
  - (i) by an independent accounting professional;
  - (ii) on the basis of financial records provided by the company; and
  - (iii) in accordance with any relevant financial reporting standards.
- (4) Section 90 (3), 92, and 93 (1) and (2), each read with the changes required by the context, applies to the conduct of an independent review in terms of this regulation and, for greater certainty, for all purposes of this regulation, a reference in any of those sections to an auditor must be regarded as referring to an independent accounting professional.

**31. General exemption from audit and review***Authority: s. 30 (2)(b)(ii), read with s. 223*

- (1) Subject to any contrary requirement set out in its Memorandum of Incorporation, or to a compliance notice issued in terms of Regulation 32 (5)(b)(ii), a profit company that falls within the category of companies contemplated in section 30 (2)(b)(ii)(aa) or (bb) is unconditionally exempted in terms of the Act from the requirement to have its annual financial statement either audited or independently reviewed.
- (2) For greater certainty, nothing in section 30 (2)(b)(ii)(aa) or (bb), or sub-regulation (1), is to be construed as relieving a company of any obligation arising in terms any

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law other than this Act, a court order, or an agreement to which the company is a party, to have its annual financial statements audited or reviewed.

**32. Company annual returns***Authority: s.33*

- (1) If a company's financial year end coincides with the anniversary date of its incorporation, the company must file its annual return in Form CoR 32.1 within 20 business days after the company's board approves its annual financial statements in terms of section 30 (3)(c).
- (2) If a company's financial year end does not coincide with the anniversary date of its incorporation -
  - (a) the company must file its annual return in Form CoR 32.1 within 20 business days after the anniversary date of its incorporation; and
  - (b) if, in terms of section 33 (1)(a) or sub-regulation (3), the company is required to file a copy of its annual financial statements in conjunction with its annual return, that requirement will be satisfied if the company files its next ensuing annual financial statements within 20 business days after the company's board approves those annual financial statements in terms of section 30 (3)(c).
- (3) A company that is -
  - (a) required in terms of Regulation 29 to have its annual financial statements audited in a particular year, must file a copy of those statements as a supplement to its annual return, in accordance with sub-regulation (1) or (2) as applicable; or
  - (b) not required in terms of the Act or Regulation 29 to have its annual financial statements audited in a particular year, but has nevertheless voluntarily had those statements audited must, at the option of the company, either -
    - (i) file a copy of those audited statements as a supplement to its annual return in accordance with sub-regulation (1) or (2) as applicable; or
    - (ii) file a financial accountability supplement to its annual return in the relevant form as set out in sub-regulation (4); or
  - (c) not required in terms of the Act or Regulation 29 to have its annual financial statements audited in a particular year, and has not voluntarily had those statements audited, must file a financial accountability supplement to its annual return in the relevant form as set out in sub-regulation (4).
- (4) A company that elects or is required to file a financial accountability supplement to its annual return must file it with the annual return in -

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- (a) Form CoR 32.2 if the company is exempted from any audit or review requirement as contemplated in Regulation 31;
  - (b) Form CoR 32.3 if the company is a non profit company that was required only to have its annual financial statements independently compiled and reported, as contemplated in Regulation 30 (2)(a);
  - (c) Form CoR 32.4 if the company was required to have its annual financial statement independently reviewed, as contemplated in Regulation 30 (2)(b).
- (5) The Commission -
- (a) must establish a systematic procedure to select and review a sampling of financial accountability supplements that have been filed in terms of this regulation, with the objects of –
    - (i) monitoring compliance with the financial record keeping and financial reporting provisions of the Act; and
    - (ii) identifying companies whose annual financial statements for a particular year should be audited; and
  - (b) may issue a compliance notice to any such company either –
    - (i) setting out changes that are required to the company's practices to better comply with the financial record keeping and financial reporting provisions of the Act; or
    - (ii) requiring the company to have its most recent annual financial statements audited on the grounds that the activities of the company during the previous year raise a reasonable apprehension of potentially adverse consequences to the public, which cannot be dispelled without such an audit being performed.
- (6) A compliance notice issued in terms of this regulation is subject to every provision of the Act respecting compliance notices.
- (7) An external company must file its annual return in Form CoR 32.5 within 20 business days after the anniversary date of its registration as an external company.

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**Part D – Capitalization of Profit Companies****33. Application of solvency and liquidity test to groups of companies***Authority: s. 223 (1)(d)(ii)*

- (1) Whenever the “aggregate assets of a company”, and the “aggregate liabilities of a company”, within a group of companies are required to be evaluated in terms of section 4 (1)(a) the evaluation must consider whether—
  - (a) the assets of the relevant company equal or exceed its liabilities; and
  - (b) the assets of each subsidiary of the relevant company equal or exceed that subsidiary’s liabilities.

**34. Powers of company with respect to shares***Authority: s 223(1)(d)(ii)*

- (1) Despite the repeal of the Companies Act, 1973, a pre-existing company retains all of the powers set out in that Act in respect of its shares that were issued and outstanding immediately before the effective date, to the extent necessary to give full effect to -
  - (a) section 35 (6); and
  - (b) Item 6 (2) of Schedule 5, subject to Regulation 35.

**35. Conversion of par value shares, and related matters***Authority: Schedule 5 Item 6*

- (1) This regulation does not apply in respect of a company contemplated in Item 6 (1) of Schedule 5.
- (2) A pre-existing company may not authorize any new par value shares on or after the effective date.
- (3) If, immediately before the effective date, a pre-existing company has any authorised class of par value shares from which it has –
  - (a) issued any shares before the effective date, the company may issue further shares of that class at any time on or after the effective date, until it has converted its par value shares in accordance with this Regulation; or
  - (b) not issued any shares before the effective date –
    - (i) the company must not issue any shares of that class on or after the effective date, unless the company’s board has first converted that class of authorised shares to shares having no par value; and

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- (ii) the board of the company may convert that class of authorised shares to shares having no par value by adopting a resolution to do so and filing a notice of that resolution in Form CoR # 35.
  - (4) Every share of a pre-existing company contemplated in Item 6 (2) of Schedule 5 must be converted to a share having no par value within 5 years after the effective date.
  - (5) The Commission may issue a compliance notice to any pre-existing company that has not converted its par value shares within the time contemplated in sub-regulation (4).
  - (6) At any time during the period contemplated in sub-regulation (4), a pre-existing company that has shares that are required to be converted in terms of that sub-regulation –
    - (a) must so indicate on its annual return filed with the Commission in terms of section 33; and
    - (b) may file without charge an amendment to its Memorandum of Incorporation to effect such a conversion, after adopting that amendment in accordance with sub-regulations (7) and (8).
  - (7) An amendment to a pre-existing company's Memorandum of Incorporation to effect a conversion of par value shares in terms of this regulation must –
    - (a) be proposed by the company's board and distributed to the shareholders, at least 10 business days before the meeting at which it will be considered; and
    - (b) be approved by a special resolution adopted at a meeting of the shareholders called for that purpose; and
    - (c) satisfy the requirements of Item 6 (3) (a) and (b) of Schedule 5.
  - (8) The board must cause a report to be prepared with a proposed resolution to convert any par value shares, which must at a minimum –
    - (a) state all information relevant to the value of the securities affected by the proposed conversion;
    - (b) identify every type and class of holders of the company's securities affected by the proposed conversion;
    - (c) describe the material effects that the proposed conversion will have on the rights and interests of the persons mentioned in paragraph (b), and
    - (d) evaluate any material adverse effects of the proposed arrangement against the compensation that any of those persons will receive in terms of the arrangement.

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- (9) At any time before a meeting called to consider a company's proposal contemplated in this Regulation –
- (a) the company may apply to a court for a declaratory order that the proposal satisfies the requirements of Item 6 (3) (a) and (b) of Schedule 5; or
  - (b) a shareholder affected by the proposal, who believes that the proposal does not adequately protect their rights, or other wise fails to satisfy the requirements of Item 6 (3) (a) and (b) of Schedule 5, may apply to the court for an order,
- and the court may make any order that is just and reasonable in the circumstances, and that furthers the objects of Item 6 of Schedule 5 and this Regulation.
- (10) Section 164 does not apply with respect to a resolution to convert par value shares of a pre-existing company in terms of this regulation, if –
- (a) the company prepared a proposal within the time contemplated in sub-regulation (4); and
  - (b) a court has made an order in terms of sub-regulation (9) with respect to that proposal; and
  - (c) the company has complied with any such order.
- (11) Despite the repeal of the Companies Act, 1973, section 78 of that Act applies with respect to the conversion of par value shares in terms of this Regulation.



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Regulation 36

**Part E – Securities Registration and Transfer****36. Company securities registers***Authority: s. 50 (1)(b)*

- (1) The securities register of a profit company required in terms of section 24 (4)(a), read with section 50 (2)(b), must be kept in one of the official languages of the Republic, and must comprise –
  - (a) for every class of authorized securities, a record of –
    - (i) the number of securities authorized, and the date of authorization;
    - (ii) the total number of securities of that class that have been issued, re-acquired or surrendered to the company; and
    - (iii) the number of issued securities of that class that are held in uncertificated form;
  - (b) in respect of every issuance, re-acquisition or surrender of securities of any particular class, entries showing –
    - (i) the date on which the securities were issued, re-acquired or surrendered to the company;
    - (ii) the distinguishing number or numbers of any certificated securities issued, re-acquired or surrendered to the company;
    - (iii) the consideration for which the securities were issued or re-acquired by, or surrendered to the company; and
    - (iv) the name and identity number of the person to, from or by whom the securities were issued, re-acquired or surrendered, as the case may be;
  - (c) for every class of authorized securities, at any time –
    - (i) the number of securities of that class that are available to be issued; and
    - (ii) the number of securities of that class that are the subject of options or conversion rights which, if exercised, would require securities of that class to be issued.
- (2) In addition to the information otherwise required, the company's securities register must also include -
  - (a) in respect of each person to whom the company has issued securities, or to whom securities of the company have been transferred -

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- (i) the person's name and business or residential address, as required by section 50 (2) (b) (i), and the person's email address if available;
    - (ii) an identifying number that is unique to that person;
    - (iii) in respect of each issue of securities to that person, the consideration for which the securities were issued, as determined by the company's board in terms of section 40; and
    - (iv) in respect of each issue or transfer of securities to that person –
      - (aa) the date on which the securities were issued or transferred to the person;
      - (bb) the number and class of securities issued or transferred to the person;
      - (cc) the distinguishing number or numbers of the securities issued or transferred to the person, if the securities are held in certificated form;
    - (v) the date on which any securities that had been issued or transferred to the person were subsequently –
      - (aa) transferred by that person, or by operation of law, to another person; or
      - (bb) re-acquired by, or surrendered to, the company in terms of any provision of the Act or the Memorandum of Incorporation; and
    - (vi) at any time, the total number of securities of that class held by the person.
  - (3) If a company contemplated in section 56 (7) has received any disclosure of a beneficial interest referred to in that section, the securities register of that company, despite any additional requirements that may be imposed by a central securities depository, must also include –
    - (a) a record of all such disclosures, including the following information for any securities in respect of which a disclosure was made–
      - (i) the name and unique identifying number of the registered holder of the securities;
      - (ii) a reference number to the relevant entry in the company's securities register at which the issue of those securities to the registered holder is recorded;
      - (iii) the number, class and in the case of certificated securities, the distinguishing numbers of the securities; and

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- (iv) the name, unique identifying number, business or residential address, and email address if available, of each person who holds a beneficial interest in the securities, and the extent of each such person's interest in the securities.
- (4) The requirement of any person to disclose information to a public company in terms of section 56 (4)(a) applies only in respect of a month during which a change has occurred in the information contemplated in section 56 (3), except to the extent that the requirements of a central securities depository provide for more frequent disclosure.
- (5) The securities register required to be kept by the Act and this regulation must be kept in such a manner as -
  - (a) to provide indexed access to all relevant entries for any one person;
  - (b) to provide adequate precautions against -
    - (i) theft, loss or intentional or accidental damage or destruction; and
    - (ii) falsification; and
  - (c) to facilitate the discovery of any falsification.
- (6) If a company keeps its securities register in electronic form, the company must –
  - (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
  - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.
- (7) Any entry in a securities register pertaining to a person who has ceased to hold securities of the company may be disposed of seven years after that person last held any securities of the company.

**37. Acquisition and loss of shareholder rights***Authority: s 223(1)(d)(ii)*

A person -

- (a) acquires the rights associated with any particular securities of a company when that person's name is entered in the company's securities register as a shareholder to whom those securities have been issued or transferred; and
- (b) ceases to have the rights associated with any particular securities of a company when the transfer to another person, re-acquisition by the company, or surrender to the company of those securities has been entered in the company's securities register.

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Regulation 38-r39

**38. Instruction to convert certificated securities into uncertificated securities**

*Authority: s. 49 (7)*

- (1) An instruction to a company to convert certificated securities into uncertificated securities must be given by the holder of the certificated securities whose name is entered in the company's securities register as the holder of the certificated securities in question, or by an authorised agent of that person.
- (2) A person who lodges certificated securities with a company, accompanied by an instruction referred to in sub-regulation (1), must do so in the manner and form prescribed in the rules of the central securities depository and must, in particular-
  - (a) provide complete and accurate information about the securities to be converted;
  - (b) indicate clearly on the face of every document of title relating to the certificated securities that those securities have been lodged for conversion into uncertificated securities.

**39. Duties of company**

*Authority: s. 49 (7)*

- (1) A company that has been instructed to convert certificated securities into uncertificated securities –
  - (a) must ensure that the documents and instruction lodged with it comply with the rules of the central securities depository;
  - (b) must ensure that the documents of title and other information relating to the certificated securities correspond to the particulars contained in the securities register;
  - (c) must ensure that--
    - (i) the distinguishing number recorded in terms of section 50 (5) is valid;
    - (ii) the distinguishing number represents the document of title evidencing the entitlement of the person who has given the instruction to convert;
    - (iii) a document of title relating to the certificated securities is valid and has not been cancelled or recorded by the company as lost or stolen; and
    - (iv) the number of certificated securities to which a document of title relates does not exceed the holding allocated to the holder of the securities concerned in the securities register;
  - (d) must verify that the document of title relating to the certificated securities has, on the face of it, been validly issued by the company; and

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- (e) may not act on an instruction to convert if it has reason to doubt the validity of the instruction or the document of title relating to the certificated securities.
- (2) After a company has accepted an instruction to convert certificated securities into uncertificated securities, it must--
  - (a) record in the securities register the date on which the securities are converted;
  - (b) indicate clearly on the face of the document of title relating to the securities that the securities have been converted;
  - (c) reflect the converted securities as uncertificated securities in its securities register.
- (3) After certificated securities have been converted in terms of sub-regulation (2), the company must instruct -
  - (a) the participant appointed by the holder of the securities; or
  - (b) in the absence of such a participant -
    - (i) a participant appointed by the company which has agreed with the company to hold the securities on behalf of the securities holder; or
    - (ii) the central securities depository,

to enter the number of uncertificated securities and the name of the holder of the securities, as it appeared in the company's securities register before the conversion took place, in an uncertificated securities register in accordance with the rules of the central securities depository.
- (4) Except in accordance with section 54, or a court order, a company may not -
  - (a) require a participant or central securities depository to remove or change the particulars of uncertificated securities from or in an uncertificated securities register; or
  - (b) reduce the balance of uncertificated securities recorded in its securities register.

**40. Legality of functions**

***Authority: s. 49 (7)***

The proper performance of the functions referred to in regulations 38 and 39 is deemed to be lawful for the purposes of section 55 (1).

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Regulation 41-r43

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**Part F – Governance of Companies****41. Pre-incorporation contracts***Authority: s. 223 (1)(d)(ii)*

If the board of a company has completely or partially rejected, or partially ratified, a pre-incorporation contract, as contemplated in section 21 (3), the company must, within 5 business days, -

- (a) file a notice of its decision with respect to that contract in Form CoR 41; and
- (b) deliver a copy of that notice to each person who is a party to the contract.

**42. Uniform standards for providing information***Authority: s. 223 (1)(d)(i)*

- (1) A person who holds any securities of a company may give notice to the company for any purpose contemplated in sections 37 (8), 39, 56, 58, 115 (8), 164 (3), or 165 (2) by delivering a completed Form CoR 42.1 to the company, except to the extent that the requirements of a central securities depository provide otherwise.
- (2) A company may notify each person who holds any securities of the company for any purpose contemplated in sections 39, 45(5), 56 (5), 60, 62 (1), or 164 (2) and (4), by delivering a completed Form CoR 42.2 to each registered security holder, except to the extent that the requirements of a central securities depository provide otherwise.
- (3) A director or prescribed officer of a company may give notice of a personal financial interest to the company by delivering a completed Form CoR 42.3.

**43. Voting by holders of beneficial interests***Authority: s. 49 (7), read with s 223 (1)(d)(ii)*

- (1) This regulation does not apply in respect of securities that are subject to the Rules of a central securities depository.
- (2) A person who holds a beneficial interest in any securities may vote in a matter at a meeting of shareholders, only to the extent that –
  - (a) the beneficial interest includes the right to vote on the matter; and
  - (b) the person's name is on the company's register of disclosures as the holder of a beneficial interest, or the person holds a proxy appointment in respect to that matter from the registered holder of those securities.
- (3) The registered holder of any securities in which any person has a beneficial interest must deliver to each such person -

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- (a) a notice of any meeting of a company at which those securities may be voted of a matter, within 2 business days after receiving such a notice from the company; and
  - (b) a proxy appointment to the extent of that person's beneficial interest, if the person so demands in terms of sub-regulation (4).
- (4) A person who has a beneficial interest in any securities that are entitled to be voted on a matter at a meeting of company's shareholders may demand a proxy appointment from the registered holder of those securities, to the extent of that person's beneficial interest, by delivering such a demand to the registered holder, in Form CoR 43 or in any other written form, or as required by the applicable requirements of a central securities depository.

**44. Record dates**

*Authority: S. 59 (2)(b)*

- (1) If any securities of a particular company are in uncertificated form, or otherwise subject to rules of a central securities depository, the company must set the record date in accordance with those rules.
- (2) A company must publish a notice of a record date for any matter in any manner set out in Regulation 6.

**45. Prescribed officers of companies**

*Authority: s 66 (10)*

For all purposes of the Act a person is a "prescribed officer" of a company if, despite not being a director of the company, that person -

- (a) has general executive authority over the company, (such as a President, Chief Executive Officer, Managing Director, Executive Director or similar office holder) by whatever title the office is designated;
- (b) has general responsibility for the financial management of the company (such as a Treasurer, Chief Financial Officer, Chief Accounting Officer, or similar office holder,) by whatever title the office is designated;
- (c) has general responsibility for management of the legal affairs of the company, (such as a General Secretary, General Counsel or similar office holder) by whatever title the office is designated; or
- (d) has general managerial authority over the operations of the company, (such as a Chief Operating Officer or similar office holder,) by whatever title the office is designated; or
- (e) otherwise directly or indirectly exercises, or significantly influences the exercise of, control over the general management and administration of the whole or a significant portion of the business and activities of the company,

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irrespective of any title assigned by the company to an office held by that person, or function performed by that person.

**46. Directors**

*Authority: s. 69(8)(b)(iv), s. 70 (6)*

- (1) A Notice of Change Regarding a Director must be filed in Form CoR 46.
- (2) The prescribed minimum value of a fine upon conviction for certain offences, which would result in automatic disqualification as a director in terms of section 69 (8)(b)(iv) is R 1 000.

**Part G – Winding up and Deregistering companies**

**47. Winding-up, dissolution and de-registration of companies**

*Authority: s. 80 to 82*

- (1) A resolution by a solvent company to wind up must be filed with Form CoR 47.1.
- (2) If a company has failed to file an annual return for two years in succession, as contemplated in section 82 (3) the Commission –
  - (a) may deliver a demand letter in Form CoR 47.2 to the company by registered post or electronic communication requiring the company to provide the satisfactory information contemplated in section 82 (3)(a)(ii); and
  - (b) may deregister the company if the company does not respond within 20 business days after the date that the demand was posted.
- (3) If a company responds to a demand sent to it in terms of sub-regulation (3)(a), the Commission –
  - (a) may de-register the company if the information received in response to the demand confirms that the company is no longer active; or
  - (b) if the information received in response to the demand confirms that the company is active -
    - (i) may require additional information if the information provided is unsatisfactory in terms of section 82 (3)(a)(ii); or
    - (ii) may issue a compliance notice requiring the company to file an annual return for every year that it has failed to do so; or
    - (iii) must issue a compliance certificate, if the information is satisfactory and the company has filed an annual return for every year that it had failed to do so.
- (4) If a company fails to provide satisfactory additional information required in terms of sub-regulation (4)(b)(i) within 20 business days, the Commission may –



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- (a) issue a Notice of Pending Deregistration in form CoR 47.3 to the company; and
  - (b) deregister the company at any time more than 20 business days after delivering the Notice of Pending Deregistration, unless during that time the company has filed its annual return for every year that it had failed to file.
- (5) When any company has been deregistered the books and papers of the company may be disposed of in such way as the Commission may direct.
  - (6) An application to re-instate a de-registered company must be made in Form CoR 47.4.
  - (7) A letter or notice under this regulation must be addressed to the company at its registered office.

**48. Transitional effect of previous regulations concerning insolvent companies**

Despite the repeal of the Companies Act, 1973, the Regulation for the Winding-Up and Judicial Management of Companies as promulgated under Government Notice R2490 of 28 December 1973, and as subsequently amended from time to time, continues to apply to any matter to which Chapter 14 of the Companies Act, 1973 continues to apply in terms of Item 9 (1) to (3) of Schedule 5 of the Act, until the date to be determined as contemplated in Item 9 (4) of Schedule 5.

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**Chapter 3 - Enhanced Accountability and Transparency****49. Application of chapter to other than public and state-owned companies***Authority: s. 223 (1)(d)(ii)*

- (1) In order to give full effect to section 84 (1)(c), any company that is required, in terms of section 30 (2)(b)(i) read with Regulation 29, to have its annual financial statements audited must comply with every obligation of a public company set out in Chapter 4 of the Act.
- (2) A company that is not required to comply with Chapter 3, other than by its Memorandum of Incorporation as contemplated in section 34 (2) –
  - (a) is subject to section 84 (5) to (7) and section 85, only to the extent that the company is subject to Part B, or Parts C and D, of Chapter 3, as the case may be;
  - (b) is subject to Part B of Chapter 3, only if its Memorandum of Incorporation either –
    - (i) requires the company to comply with the whole of Chapter 3; or
    - (ii) requires the company to appoint a company secretary; and
  - (c) is subject to Parts C and D of Chapter 3, only if its Memorandum of Incorporation either –
    - (i) requires the company to comply with the whole of Chapter 3; or
    - (ii) requires the company to appoint an auditor.

**50. Social and Ethics Committee***Authority: s. 72 (4)*

- (1) A public or a state owned company must appoint a social and ethics committee, unless –
  - (a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or
  - (b) it has been exempted by the Tribunal in accordance with sub-regulation (2).

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- (2) A company may apply to the Tribunal in form CTR 1 for an exemption from the requirement to appoint a social and ethics committee, and the Tribunal may grant such an exemption if it is satisfied that –
- (a) the company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee in terms of section 72 (4) and this regulation; or
  - (b) despite being a public or state owned company, it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the the nature and extent of the activities of the company.
- (3) An exemption granted in terms of sub-regulation 2 is valid for 5 years, or such shorter period as the Tribunal may determine at the time of granting the exemption, unless set aside by the Tribunal in terms of sub-regulation (4)
- (4) The Commission, on its own initiative or on request by a shareholder or a person who was granted standing by the Tribunal at the hearing of the exemption application, may apply to the Tribunal to set aside an exemption only on the grounds that the basis on which the exemption was granted no longer applies.
- (5) A company that is required to have a social and ethics committee, and that –
- (a) exists on the effective date, must elect the members of the committee at each annual general meeting of the company, commencing with the annual general meeting held during 2011; or
  - (b) is incorporated on or after the effective date, must –
    - (i) constitute a social and ethics committee by appointment by –
      - (aa) the incorporators of the company, or
      - (bb) the board within 40 business days after the incorporation of the company; and
    - (ii) elect the members of the committee at each annual general meeting of the company, commencing with the first annual general meeting held after the company is incorporated.
- (6) A company's social and ethics committee comprises not less than three directors of the company, a majority of whom must satisfy the requirements set out in sub-regulation (8).
- (7) If a company is required to have a social and ethics committee, the Board must appoint a social and ethics advisory panel to assist the committee, comprising, from each of the following categories, a number of persons equivalent to the number of members of the committee –

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- (a) the employees of the company; and
  - (b) persons who are registered members of a profession entitled to practice in a field directly related to social and ethical matters including, but not limited to –
    - (i) anthropology or psychology,
    - (ii) education,
    - (iii) environmental assessment,
    - (iv) health,
    - (v) sociology or social services, or
    - (vi) law, theology or ethicsand who are accountable to their respective professional bodies in terms of ethical standards and rules of professional conduct; and
  - (c) persons who are neither directors or employees of the company, but who represent the community and public interest, having regard to location and nature of the company's activities and the consumers of its products or services.
- (8) Every member of a company's social and ethics advisory panel must be a person who is not -
- (a) disqualified in terms of the Act from being a director or prescribed officer of that company;
  - (b) involved in the day to day management of the company's business nor has been so involved at any time during the previous three financial years;
  - (c) a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
  - (d) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that person is compromised by that relationship;
  - (e) an office bearer of any registered trade union representing employees of the company; or
  - (f) related to any person who falls within any of the criteria set out in paragraph (b), (c), (d) or (e).

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- (9) Section 75 (5), read with the changes required by the context, applies to any person participating in a discussion of a matter being considered by the social and ethics advisory panel of a company.
- (10) Participation by any person in the social and ethics advisory panel of a company does not –
- (a) entitle that person to vote in any matter to be decided by the social and ethics committee;
  - (b) confer on that person the status of a director of the company, or membership in any committee of the board of the company, or entitle that person to any rights of a director of the company or member of any such committee;
  - (c) impose on that person any duty or obligation of a director of the company, other than the obligation to disclose a personal financial interest in a matter, as required by sub-regulation (9).
- (11) If a vacancy occurs in the social and ethics committee at any time, other than within 40 business days immediately before the next annual general meeting of the company, the board of the company must appoint a person within 40 business days after the vacancy occurs to fill the vacancy until the next annual general meeting, from among the other qualified directors of the company.
- (12) A social and ethics committee has the following functions:
- (a) To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to -
    - (i) social and economic development, including the company's standing in terms of the goals and purposes of -
      - (aa) the 10 principles set out in the United Nations Global Compact Principles; and
      - (bb) the OECD recommendations regarding corruption;
      - (cc) the Employment Equity Act; and
      - (dd) the Broad-Based Black Economic Empowerment Act;
    - (ii) good corporate citizenship, including the company's -
      - (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
      - (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and

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- (cc) record of sponsorship, donations and charitable giving;
  - (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
  - (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
  - (v) labour and employment, including
    - (aa) The company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
    - (bb) The company's employment relationships, and its contribution toward the educational development of its employees;
  - (b) to consult with the company's social and ethics advisory panel with respect to any matter within the mandate of the committee;
  - (c) to draw matters within its mandate to the attention of the Board as occasion requires; and
  - (d) to report annually to the shareholders at the company's annual general meeting on the matters within its mandate.
- (13) A social and ethics committee of a company is entitled to -
- (a) require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;
  - (b) request from any other employee of the company any information or explanation necessary for the performance of the committee's functions;
  - (c) attend any general shareholders meeting;
  - (d) receive all notices of and other communications relating to any general shareholders meeting; and
  - (e) be heard at any general shareholders meeting contemplated in this paragraph on any part of the business of the meeting that concerns the committee's functions.
- (14) A company must pay all the expenses reasonably incurred by its social and ethics committee including, if the social and ethics committee considers it appropriate, the costs of the social and ethics advisory panel, or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

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Regulation 51-r53

- (15) Section 84 (6) and (7), read with the changes required by the context, apply with respect to a company that fails to appoint a social and ethics committee, or social and ethics advisory panel, as required by this Regulation.

**51. Forms required by this Chapter**

- (1) A notice issued by the Commission to a company that has failed to appoint an auditor, company secretary, audit committee or social and ethics committee, as contemplated in section 84 (6), or Regulation 50 (15), must be in Form CoR 51.1.
- (2) A notice of appointment of auditor or company secretary, or of person ceasing to act in either capacity, as contemplated in section 85 (3), must be in Form CoR 51.2.

**Chapter 4 - Offerings of Company Securities**

**Part A – Offering Securities**

**52. Threshold values and time periods**

*Authority: s. 96 (2)*

- (1) The threshold value required in terms of section 96 (2)(a) is R 100 000.
- (2) The minimum time required in terms of section 96 (2)(b) is 6/12 months.

**53. Forms relating to securities offerings**

- (1) Documents filed in connection with an employee share scheme, as required by section 97 (2)(c) must be accompanied by Form CoR 53.1.
- (2) A certificate required by section 97 (2)(d) must be in Form CoR 53.2.
- (3) An application to exclude categories of persons from a rights offer, as contemplated in section 99 (7) must be filed in Form CoR 53.3.
- (4) A notice of registration of a prospectus issued by the Commission must be in Form CoR 53.4.
- (5) An application to the commission to allow required information to be omitted from a prospectus, as contemplated in section 100 (9) and (10) must be in form CoR 53.5.

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Chapter 4 - Offerings of Company Securities : Part B – Requirements Concerning Offering of Securities

Regulation 54-r55

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**Part B – Requirements Concerning Offering of Securities**

**54. Interpretation**

For the purposes of this Part, and Parts C and D of this Chapter, unless the context indicates otherwise –

- (a) “**King Code**” means the Code of Corporate Practices and Conduct representing the principles of good governance as set out in the King Report as amended or replaced from time to time;
- (b) “**property**” includes movable and immovable property, and securities, but does not include any property if its purchase price is not material; and
- (c) “**vendor**” includes any person who, directly or indirectly, sells or otherwise disposes of any property to a company, subject to paragraph (d)(ii); and
- (d) in respect of any property hired or proposed to be hired by a company –
  - (i) “purchase money” includes the consideration for the lease; and
  - (ii) “vendor” includes the lessor.

**55. Application**

- (1) A report by an auditor required by Part C or D of this Chapter must not be made by any auditor who is -
  - (a) a director, officer or employee, or a partner of or in the employment of a director, officer or employee of the company or of any other company in the group of companies; or
  - (b) related to a person contemplated in paragraph (a).
- (2) If a company has been carrying on business for less than 5 years, or if a business undertaking has been carried on for less than 5 years, the annual financial statements of the company or business undertaking required by this Chapter must be provided only for the number of financial years that the company has existed, or the business has been carried on.
- (3) To the extent that a person making a report required by Part C or D of this Chapter considers it necessary to adjust the amount of profits or losses or assets and liabilities dealt with by the report, that person may either –
  - (a) include a note setting out the adjustments the person considers ought to be made; or
  - (b) make those adjustments, in which case, the person must -



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- (i) clearly indicate the adjustments that have been made; and
  - (ii) include a note explaining the adjustments that have been made.
- (4) Irrespective whether a person chooses to set out the adjustments that ought to be made, as contemplated in sub-regulation (3)(a), or makes the adjustments, as contemplated in sub-regulation (3)(b), the person making the report must include a note –
  - (a) setting out a factual basis in support of the adjustment, or proposed adjustments, as the case may be; and
  - (b) identifying which adjustments have a continuing effect on the company, and which do not.

**56. Letters of allocation in respect of unlisted securities**

*Reference s. 99(4)(a)*

- (1) A company desiring to issue a letter of allocation in respect of unlisted securities must file -
  - (a) a copy of -
    - (i) the letter of allocation for registration; and
    - (ii) any document required in the circumstances by section 99 (4);
  - (b) any agreement referred to in a document contemplated in paragraph (a), with a translation in an official language, if the agreement is not already in an official language; and
  - (c) the prescribed fee.
- (2) Upon registering the documents referred to in sub-regulation (1), the Commission must give a written notice of the registration of the letter of allocation to the company concerned or the person who submitted them on behalf of the company.
- (3) Every letter of allocation that is issued must-
  - (a) state on the face of it that a copy of it, together with copies of all other documents referred to in sub-regulation (1), have been registered as required by this regulation; and
  - (b) be accompanied by a copy of every document referred to in sub-regulation (1).
- (4) Sub-regulation (3)(b) does not apply to any letter of allocation issued in connection with a renunciation of part of the rights to subscribe in terms of the rights offer.

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Regulation 57-r58

**57. Rights offers in respect of listed securities**

*Reference: s. 96 (1)(d)*

The provisions of sections 95 (5) and (6), 100, 102, 104, 105 and 106 and of Regulation 61, each read with the changes required by the context, apply to –

- (a) a rights offer in respect of listed securities; and
- (b) all documents issued in connection with such a rights offer.

**58. General requirements for a prospectus**

*Reference: s. 100*

- (1) Every prospectus must be produced in a style that satisfies the requirements set out in section 6 (4) to (6).
- (2) As far as possible the general matter of a prospectus must be presented in narrative form, and statistical matter must be presented in tabular form.
- (3) The information required by the Act to be stated in a prospectus must -
  - (a) be set out in print or type;
  - (b) be not less conspicuous than that in which any additional matter is printed or typed; and
  - (c) be set out in separate paragraphs under the headings -
    - (i) included in Part C of this Chapter, unless sub-paragraph (ii) applies to the prospectus; or
    - (ii) contemplated in Part D of this Chapter, if the intended offer -
      - (aa) relates to unlisted securities that are in all respects uniform with previously issued securities of the same company; and
      - (bb) is made only to existing holders of that company securities, with a right to renounce in favour of other persons.
- (4) A prospectus must deal with each of the applicable provisions of Part C or D of this Chapter under its Regulation number and heading.
- (5) The last paragraph of the prospectus, under the heading - 'Paragraphs of Chapter 4 which are not applicable' – must be a list setting out the numbers of any provisions of Part C or D of this Chapter that are not applicable.

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Regulation 59-r60

- (6) Every prospectus issued must -
  - (a) state on its face that it is a copy of a registered prospectus; and
  - (b) specify or refer to statements included in it specifying any documents required by the Act or this Chapter to be endorsed on or attached to or to accompany a prospectus when it is filed.

**59. Signing, date and date of issue, of prospectus**

- (1) A prospectus in respect of an offer for the subscription of shares of a company must be signed by every person named in it as a director of the company or by an agent authorised in writing by a director to sign on behalf of that director.
- (2) A prospectus in respect of any other offer must be signed by -
  - (a) every person making the offer, or by an agent authorised by that person in writing to sign on their behalf;
  - (b) if the person making the offer is a company or firm –
    - (i) by 2 directors of the company, or if it has only 1 director, by that director;
    - (ii) by not less than one-half of the partners in the firm; or
    - (iii) by an agent authorised by any director or partner in writing to sign on their behalf.
- (3) If a prospectus has been signed by or on behalf of directors of a company or partners in a firm as provided in sub-regulation (2), every director of that company or partner in that firm is deemed to have authorised the issue of the prospectus irrespective whether that director or partner signed it, unless it is proven that it was issued without the director or partner's knowledge, authority or consent.
- (4) Every signature to a prospectus must be dated, and the latest of those dates is deemed to be the date of the prospectus.

**60. Additional information required**

- (1) If it is the intention to acquire a business undertaking or property, the prospectus must include a brief history of that business undertaking or property, including –
  - (a) particulars of each business undertaking or property purchased or acquired, or proposed to be purchased or acquired by the company or any subsidiary of the company, if any part of the purchase price of that business undertaking or property is to be defrayed out of the proceeds of the issue;

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Regulation 61

- 
- (b) the amount, if any, paid or payable as purchase money in cash or securities for any such business undertaking or property, specifying the amount, if any, paid for goodwill;
  - (c) the name and address of the vendor of the business undertaking or property; and
  - (d) the amount payable in cash or securities to every vendor.
- (2) If the offer is not being underwritten, the prospectus must include a statement by the directors setting out the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed.
- (3) Every prospectus must include a narrative statement setting out –
- (a) the extent to which, and manner in which, the company has applied the principles of the King Code; and
  - (b) the reasons for any instance of non-compliance with the King Code.

**61. Access to supporting documents**

- (1) The original, or a certified copy of each of the following documents relating to the company, and any subsidiary of the company, must be available for inspection at the registered office of the company for at least 10 business days after the date of a prospectus issued by or on behalf of that company:
- (a) The Memorandum of Incorporation
  - (b) All material contracts referred to in regulation ##, and any other agreement referred to in this chapter, if the agreement is written;
  - (c) A memorandum giving full particulars of any unwritten agreement contemplated in paragraph (b);
  - (d) The written consents required by section 102; and
  - (e) The relevant power of attorney documents, or resolutions authorising the signing of the prospectus, if all the directors have not signed the prospectus in terms of regulation 61.

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Regulation 62-r63

**Part C – Items required to be included in a Prospectus**

*In terms of Regulation 60 (2)(c)(i)*

**I – Information about the company whose securities are being offered**

**62. Name, address and incorporation**

- (1) The name of the company.
- (2) The address of the company's registered office and the office of its transfer agent, if any.
- (3) The date of incorporation of the company.
- (4) If the company is a foreign company –
  - (a) the name of the country in which it was incorporated; and
  - (b) the date and registration number of the company's registration –
    - (i) as an external company in terms of section 23, if it carries on business within the Republic; or
    - (ii) as a foreign company, in terms of section 99 (1)(b).
- (5) In addition to the requirements set out in sub-regulations (1) to (4), if the company is a subsidiary –
  - (a) the name of its holding company; and
  - (b) the address of the registered office of its holding company.

**63. Directors and other office holders**

- (1) The names, occupations and business addresses of the directors and proposed directors of the company (specifying any who hold, or are proposed to hold, a prescribed office in the company), and their nationalities, if not South African.
- (2) The term of office for which any director has been or is to be appointed, the manner in which, and terms on which, any proposed director will be appointed, and particulars of any right held by any person relating to the appointment of any director.
- (3) Particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether or not determined by the Memorandum of Incorporation or by the company or any subsidiary.

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Regulation 64

- 
- (4) If the business of the company or its subsidiary or any part thereof is managed or is proposed to be managed by a third party under a contract, the name and business address (or the address of its registered office, if a company) of the third party and a description of the business so managed or to be managed.
  - (5) Any borrowing powers of the company and any subsidiary exercisable by the directors, the manner in which any such borrowing powers may be varied, and the extent that any such borrowing powers have been exceeded or varied, or both, during the immediately preceding three years.
  - (6) The name and address of the company's -
    - (a) auditor;
    - (b) attorney, banker, stockbroker, trustee, if any, and underwriter, if any; and
    - (c) company secretary, if any, together with the company secretary's professional qualifications.

**64. History, state of affairs and prospects of company**

- (1) The general history of the company and its subsidiary stating, among other things -
  - (a) the length of time during which the business of the company and of any subsidiary has been carried on; and
  - (b) the date on which the company became a public company.
- (2) A general description of the business carried on or to be carried on by the company and its subsidiary and, if the company or its subsidiary carries on or proposes to carry on, 2 or more businesses that are material having regard to the profits or losses, assets employed or to be employed or any other factor, information as to the relative importance of each such business.
- (3) Details of any change in the business of the company, if material, during the past 5 years.
- (4) A general description giving a fair presentation of the state of affairs of the company and its subsidiary, including-
  - (a) the name, date and place of incorporation and the issued or stated capital of its subsidiary, together with details of the shares held by the holding company, and the main business of its subsidiary and the date on which it became a subsidiary; and
  - (b) if material, a statement as to the estimated commitments of the company and its subsidiary for the purchase, construction or installation of buildings, plant or machinery, the estimated date of completion and the commencement of the operational use thereof.

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Regulation 65-r66

- (5) Brief particulars of any alteration of capital during the preceding 3 years.
- (6) A summary of any offers of securities of the company to the public for subscription or sale during the preceding 3 years, the prices at which those securities were offered, the number of securities allotted in pursuance thereof and whether issued to all shareholders in proportion to their shareholdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment.
- (7) The situation, area and tenure of the principal immovable property held or occupied by the company and its subsidiary including, in the case of leasehold property, the rental and unexpired term of the lease.
- (8) For the company and each subsidiary, in respect of each of the preceding 5 years, particulars of-
  - (a) the profits or losses before and after tax;
  - (b) the dividends paid;
  - (c) the dividends paid in cents per share; and
  - (d) the dividend cover for each year;or, if the company is a holding company, the same information, with any changes required by the context, for the company in consolidated form.
- (9) The opinion of the directors, stating the grounds for that opinion, as to the prospects of the business of the company and of its subsidiary and of any subsidiary or business undertaking to be acquired or intended to be acquired within one year following the date of the prospectus.

**65. Share capital of the company**

Particulars of the share capital -

- (a) the stated capital, the different classes of shares, and the number of shares authorised, and issued, in respect of each class of shares;
- (b) a description of the respective preferential conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets; and
- (c) the number of founders' and management or deferred shares, if any, and the special rights attaching to those shares.

**66. Loans**

- (1) Details of material loans, including debentures, to the company and to its subsidiary at the date of the prospectus, stating-

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Regulation 67

- 
- (a) whether each such loans is secured or unsecured;
  - (b) the names of the lenders if not debenture-holders;
  - (c) the amount, terms and conditions of repayment;
  - (d) the rates of interest on each loan; and
  - (e) details of the security, if any.
- (2) Details of material loans by the company or by its subsidiary, other than in the ordinary course of business, at the date of the prospectus, stating-
- (a) the date of the loan;
  - (b) the person to whom made;
  - (c) the rate of interest;
  - (d) if the interest is in arrear, the last date on which it was paid and the extent of the arrears;
  - (e) the period of the loan;
  - (f) the security held;
  - (g) the value of that security and the method of valuation;
  - (h) if the loan is unsecured, the reasons therefor; and
  - (i) if the loan was made to another company, the names and addresses of the directors of that company.

**67. Options or preferential rights in respect of shares**

- (1) The substance of any agreement or proposed agreement, as at the date of the prospectus, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of-
- (a) the period during which it is exercisable;
  - (b) the price to be paid for shares subscribed for under it;
  - (c) the consideration given or to be given for it;
  - (d) the names and addresses of the persons to whom it was given, other than to existing shareholders as such or to employees under a bona fide staff option scheme;



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Regulation 68-r69

- (e) if given to existing shareholders as such, material particulars thereof; and
  - (f) any other material fact or circumstance concerning the granting of such option or right.
- (2) For the purpose of this regulation, “subscribing for shares” includes acquiring them from a person to whom they were allotted, or were agreed to be allotted, with a view to that person offering them for sale.

**68. Shares issued or to be issued otherwise than for cash**

The number of shares that, within the preceding 2 years, were issued or were agreed to be issued by the company or its subsidiary to any person, otherwise than for cash, and the consideration for which those shares were issued or were agreed to be issued, and the value of the property, if any, acquired or to be acquired.

**69. Property acquired or to be acquired**

- (1) Particulars of any immovable property or other property of the nature of fixed assets purchased or acquired by the company or its subsidiary or proposed to be purchased or acquired, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue, or is to be or was within the preceding 2 years paid in whole or in part in securities of the company or its subsidiary, or out of the funds of the company or its subsidiary, whether in cash or shares, or the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or its subsidiary.
- (2) Details of the consideration given, or to be given, for the acquisition of any such property, specifying the value payable for goodwill, if any.
- (3) The names and addresses of the vendors and the consideration received or to be received by each.
- (4) Brief particulars of any transaction relating to the property completed within the preceding 2 years in which any vendor of the property to the company or its subsidiary or any person who is or was at the time of the transaction a promoter or a director or proposed director of the company had any interest, direct or indirect: Provided that where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.
- (5) Particulars of the price at which any such property which is immovable property or an option over immovable property was purchased or sold within 3 years immediately before the date of the prospectus where any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of his interest; for

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Regulation 70-r73

the purposes of this subparagraph, shares of a company, the major asset of which is immovable property, shall be deemed to be immovable property.

**70. Amounts paid or payable to promoters**

The amount paid within the preceding 2 years or proposed to be paid to any promoter, or to any partnership, syndicate or other association of which that promoter is or was a member, and the consideration for that payment, and any other benefit given to the promoter, partnership, syndicate or other association within the same period or proposed to be given, and the consideration for the giving of that benefit, and the promoter's name and address.

**71. Commissions paid or payable in respect of underwriting**

The amount, if any, or the nature and extent of any consideration, paid within the preceding 2 years, or payable as Commission to any person (including Commission so paid or payable to any sub-underwriter who is a promoter or director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company, the name, occupation and business address of each such person, particulars of the amounts underwritten or sub-underwritten by each and the rate of the Commission payable for such underwriting or sub-underwriting agreement with such person; and if such person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or officer of the company in respect of which the prospectus is issued.

**72. Preliminary expenses and issue expenses**

The amount or estimated amount of preliminary expenses, if incurred within 2 years of the date of the prospectus, and the persons by whom any of those expenses were paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses were paid or are payable.

**73. Material contracts**

- (1) The dates and the nature of, and the parties to, every material agreement entered into by the company or its subsidiary, other than -
  - (a) agreements entered into in the ordinary course of the business carried on or proposed to be carried on by the company or its subsidiary; or
  - (b) an agreement entered into more than 2 years before the date of the prospectus.
- (2) A brief summary of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company and its subsidiary.

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Regulation 74-r77

**74. Interest of directors and promoters**

- (1) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the promotion of the company and in any property proposed to be acquired by the company out of the proceeds of the issue, and where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.
- (2) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the property acquired or proposed to be acquired by the company or its subsidiary during the 3 years preceding the date of the prospectus.
- (3) A statement of all sums paid or agreed to be paid within the 3 years preceding the date of the prospectus to any director or to any company in which he is beneficially interested or of which he is a director, or to any partnership, syndicate or other association of which he is a member, in cash or shares or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

**II – Information about the offered securities**

**75. Purpose of the offer**

A statement of the purpose of the offer giving reasons why it is considered necessary for the company to raise the capital offered, and if the capital offered is more than the amount of the minimum subscription referred to in Regulation 80, the reasons for the difference between the capital offered and that minimum subscription.

**76. Time and date of the opening and of the closing of the offer**

The time and date of the opening and of the closing of the subscription lists or of the offer.

**77. Particulars of the offer**

- (1) Particulars of the securities offered, including-
  - (a) the class of securities;
  - (b) the number of securities offered;
  - (c) the issue price;
  - (d) if any securities are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property; and

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Regulation 78

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- (e) other conditions of the offer.
- (2) If, during the 5 years immediately preceding the date of the prospectus, the company issued any securities, the prospectus must include a statement setting out -
- (a) the dates of issue of those securities;
  - (b) the price at which they were issued; and
  - (c) and the reasons for any differentiation between those prices and the issue price of the securities being offered by the prospectus.
- (3) If, during the 5 years immediately preceding the effective date, the company issued any securities for a premium, the prospectus must include a statement setting out -
- (a) the dates of issue of those securities;
  - (b) the reasons for any such premium;
  - (c) the reasons for any differentiation between the amounts of any such premium; and
  - (d) how any such premium was be dealt with.

**78. Minimum subscription**

- (1) The minimum amount which, in the opinion of the directors, must be raised by the issue of the shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:
- (a) The purchase price of any property purchased or to be purchased, if any part of the purchase price is to be defrayed out of the proceeds of the issue;
  - (b) any preliminary expenses payable by the company, and any Commission payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares of the company;
  - (c) the repayment of any moneys borrowed by the company and its subsidiary in respect of any of the foregoing matters;
  - (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
  - (e) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case; and

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Regulation 79-r82

- (f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

### **III – Statements and Reports relating to the Offer**

#### **79. Statement as to adequacy of capital**

A statement by the directors of the company either –

- (a) that, in their opinion, the issued capital of the company (including the amount to be raised in pursuance of this offer) is adequate for the purposes of the business of the company and of its subsidiary, if any for at least 12 months from the date of the prospectus; or
- (b) if they are of the opinion that the capital of the company as contemplated in paragraph (a) is inadequate, setting out the extent of the inadequacy and the manner in which, and the sources from which, the company and its subsidiary are financed, or are proposed to be financed.

#### **80. Report by directors as to material changes**

A report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary which may have taken place between the last date to which the annual financial statements of the company or any subsidiary, as the case may be, were made out, and the date of the prospectus.

#### **81. Statement as to listing on stock exchange**

A statement as to whether or not an application has been made for a listing of the shares offered and, if so, the name of the relevant exchange.

#### **82. Report by auditor of company**

(1) A report by the auditor of the company with respect to-

- (a) profits or losses and assets and liabilities, in accordance with sub-regulations (2) or (3), as applicable; and
- (b) the rates of the dividends, if any, paid by the company in respect of each class of securities of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of –
  - (i) each class of shares on which dividends were paid; and
  - (ii) the cases in which no dividends were paid in respect of a particular class of shares in respect of any of those years; and

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Regulation 82

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- (c) if no annual financial statements were made out by or for the company in respect of any part of the 5 years ending on a date 3 months before the issue of the prospectus, a statement of that fact.
- (2) If the company has no subsidiary, the report -
    - (a) in regard to profits or losses, must deal with the profits or losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and
    - (b) in regard to assets and liabilities, must deal with the assets and liabilities of the company at the last date to which the annual financial statements of the company were made out.
  - (3) If the company has a subsidiary, the report -
    - (a) in regard to profits or losses, must deal separately with the company's profits or losses as provided by sub-regulation (2), and in addition, must deal-
      - (i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern holders of the company's securities; or
      - (ii) individually with the profits or losses of each subsidiary, so far as they concern holders of the company's securities; or
      - (iii) as a whole with the consolidated profits or losses of the group of companies so far as concerns holders of the company's securities; and
    - (b) in regard to assets and liabilities, must deal separately with the company's assets and liabilities as provided by sub-regulation (2) and, in addition, must deal-
      - (i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interest therein of holders of the company's securities, other than the company; or
      - (ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of shareholders other than the company; or
      - (iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of shareholders other than the company;
    - (c) if a subsidiary incurred losses, must state the amounts of those losses and the manner in which provision was made for them.
  - (4) The auditor must be satisfied, as far as reasonably practicable, that, except as stated in the report-

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Regulation 83-r84

- (a) the debtors and creditors do not include any accounts other than trade accounts;
- (b) the provisions for doubtful debts are adequate;
- (c) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
- (d) intercompany profits in the group have been eliminated;
- (e) there have been no material changes in the assets and liabilities of the company and of any subsidiary since the date of the last annual financial statements.

**83. Report by auditor where business undertaking to be acquired**

If the proceeds, or any part of the proceeds, of the issue of the shares or any other funds are to be applied directly or indirectly in the purchase of any business undertaking, a report made by an auditor named in the prospectus on-

- (a) the profits or losses of the business undertaking in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

**84. Report by auditor where company will acquire a subsidiary**

- (1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of securities of any other juristic person by reason of which or of anything to be done in consequence thereof or in connection therewith, that juristic person will become a subsidiary of the company, a report made by an auditor named in the prospectus on-

- (a) the profits or losses of the other juristic person in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the other juristic person at the last date to which the annual financial statements of the juristic person were made out.

- (2) The report must-

- (a) indicate how the profits or losses of the other juristic person dealt with by the report would, in respect of the shares to be acquired, have concerned shareholders of the company and what allowance would have fallen to be made, in respect of assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

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Regulation 85

- (b) where the other juristic person has a subsidiary, or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profits or losses and the assets and liabilities of the juristic person and its subsidiary and such other juristic person as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by Regulation 84 (3) in relation to the company and its subsidiary.

**85. Requirements for prospectus of mining company**

- (1) In this regulation, “**mining company**” includes a company that carries on or proposes to carry on mining, development or prospecting for or exploitation of any mineral resources, or that acquires or proposes to acquire any mineral rights thereto or options thereon.
- (2) A report by an expert containing information appropriate to the subject matter of the prospectus and including, if applicable-
  - (a) a statement describing briefly the geological characteristics of the occurrence;
  - (b) details of previous operations and production relevant to the workability and pay ability of the proposed mining operations;
  - (c) survey, drilling and borehole results;
  - (d) ore reserves;
  - (e) an interpretation of the information available with reference to the viability of the project.
- (3) Material information not otherwise required by Parts B, C or D of this Chapter relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including, if applicable-
  - (a) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;
  - (b) the name of the farm on and district in which each is situated;
  - (c) the area of each;
  - (d) the aggregate price or other consideration for which they were or are to be acquired;
  - (e) relevant details of any option as aforesaid.
- (4) A statement by the directors of the plans for reaching the production stage or for increasing output, including information regarding-
  - (a) shaft sinking and development;



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- (b) capital expenditure for each material stage of development.

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Regulation 86

**Part D – Items required to be included in a Prospectus**

*In terms of Regulation 60 (2)(c)(ii)*

**86. Application of Part C Regulations**

If, as contemplated in Regulation 60 (2)(c)(ii), an intended offer -

- (a) relates to unlisted securities that are in all respects uniform with previously issued securities of the same company; and
- (b) is made only to existing holders of that company securities, with a right to renounce in favour of other persons

the requirements for a prospectus, as set out in Part C, listed in the first column of the following table, apply to the extent and subject to the alterations listed in the second column.

Regulation	Extent to which the Regulation applies, or alterations to the regulation
62	Only sub-regulations (1), (2) and (4) apply.
63	Only sub-regulations (1) and (6)(c) apply.
64	Only sub-regulation (2) applies, and it applies only if there has been a material change in the nature of the company's activities since it last issued an annual financial statement.
65	All of the Regulation applies
66	None of the Regulation applies
67	All of the Regulation applies
68	None of the Regulation applies
69	None of the Regulation applies
70	None of the Regulation applies
71	All of the Regulation applies
72	None of the Regulation applies
73	All of the Regulation applies
74	All of the Regulation applies, but without reference to any promoter.

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Regulation 86

75	The following provision is substituted for the regulation:  “A statement of the purpose of the offer, giving reasons why it is considered necessary to raise the capital offered.”
76	All of the Regulation applies.
77	All of the Regulation applies.
78	None of the Regulation applies.
79	None of the Regulation applies.
80	All of the Regulation applies.
81	None of the Regulation applies.
82	None of the Regulation applies.
83	All of the Regulation applies.
84	All of the Regulation applies.
85	None of the Regulation applies.

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Chapter 5 - Fundamental Transactions and Takeover Regulations : Part A – Interpretation and Application

Regulation 87

**Chapter 5 - Fundamental Transactions and Takeover Regulations****Part A – Interpretation and Application****87. Definitions**

In this Chapter, and in applying Part B and Part C of Chapter 5 of the Act, unless the context indicates otherwise –

- (a) **“circular”** means a document required to be completed in English in accordance with Part B and Part C of Chapter 5 of the Act and this Chapter, and posted to relevant holders;
- (b) **“condition as to acceptance”** means a condition of an offer, announced in the firm intention announcement, determined by an offeror as being, and relating only to, the minimum percentage level of securities required to be tendered by offeree regulated company holders in order for an offeror to be obliged to accept all tendered securities, and for purposes of clarity, shall not include a condition relating to the ability of an offeror to meet its cash consideration commitment;
- (c) **“control”** means a holding of a beneficial interest in a regulated company equal to or exceeding the specified percentage of voting rights in that regulated company;
- (d) **“controlled company”** means a regulated company which is controlled, directly or indirectly, by its pyramid;
- (e) **“dealings”** means acquisitions, disposals, subscriptions, grants and issues of securities, however effected;
- (f) **“fair and reasonable opinion”** means the opinion expressed by an independent expert on the fairness and reasonableness of an offer consideration, taking account of value and price, given to either -
  - (i) an independent board of an offeree regulated company; or
  - (ii) to an independent board of an offeror company, where required;
- (g) **“independent”** or **“acts independently”** means a person who has no conflict of interest and is able to make impartial decisions without fear or favour in relation to an offer;
- (h) **“independent board”** means those directors of an offeree regulated company declared or determined to be independent directors;
- (i) **“independent board of an offeror company”** means those directors of an offeror company declared or determined to be independent directors;

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- (j) **“independent director”** means a director who acts independently;
  - (k) **“independent expert”** means an independent expert as described in Section 114(2) of the Act;
  - (l) **“material”** means for purposes of Part B and Part C of Chapter 5 of the Act and the Takeover Regulations, an amount equal to or greater than 10% of any subject matter in relation to an offer;
  - (m) **“offeree regulated company”** means a regulated company which is itself the subject of an offer, or a regulated company, the securities of which or any part thereof are the subject of an offer;
  - (n) **“offeror”** means any person, including its concert parties, who enters into or proposes any affected transaction, including without limitation -
    - (i) a person offering to acquire the assets or undertaking in terms of Section 117(1)(c)(i) of the Act;
    - (ii) the surviving amalgamated or merged company that owns all securities, assets or liabilities of amalgamating or merging companies in terms of Section 117(1)(c)(ii) of the Act;
    - (iii) a person, excluding the offeree regulated company concerned, proposing to acquire securities in terms of Section 117(1)(c)(iii) of the Act;
    - (iv) a person offering to acquire securities in accordance with Sections 117(1)(c)(v),(vi) or (vii) of the Act;
  - (o) **“options”** mean all options granted or similar rights given, by a regulated company, whether vested or not, including those granted, or given, in terms of any formalised -
    - (i) share incentive scheme;
    - (ii) phantom scheme, which has rights which could be equity settled; or
    - (iii) share participation rights scheme, which has rights which could be equity settled; or
    - (iv) agreement with any person, which has rights which could be equity settled;
  - (p) **“other conditions”** means any condition of an offer, but does not include a condition as to acceptance, or a condition relating to the ability of an offeror to meet its cash consideration commitment;
  - (q) **“publish” or “announce”** means:

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- (i) in the case of a person listed on an exchange as defined in and regulated by the Securities Services Act, 2004, as amended, disclosure in the manner required by such stock exchange for immediate public release after receiving Panel approval; and
  - (ii) in the case of any other person not listed on an exchange as defined in and regulated by the Securities Services Act, 2004, as amended, disclosure in the manner determined by the Panel after receiving Panel approval;
- (r) **"pyramid"** means the ultimate controlling juristic person, or any intermediate juristic person that, directly or indirectly, holds at least the specified percentage of a controlled company and after applying consolidation accounting principles (irrespective of whether consolidation principles should be applied or not) either:
  - (i) derives more than 75% of its total attributable income from such controlled company; or
  - (ii) the attributable net assets in such controlled company represent more than 75% of the total attributable net group assets of the pyramid;
- (s) **"Ruling"** means a written decision issued by the Executive Director with respect to a possible affected transaction, proposed affected transaction or affected transaction which is binding on the Panel, subject to review or appeal in accordance with the Act; and
- (t) **"SAMVAL code"** means the South African Code for Reporting of Mineral Asset Valuation.

**88. Interpretation**

- (1) The word **"includes"** in the definition of **"acquisition"** in Section 117(1)(a) embraces acquiring securities by any means whatsoever.
- (2) The widened definition of **"acquisition"** embraces the principle of a person advantaging himself by way of increased voting power without acquiring any securities. For example, a conversion of a minority's holding of voting securities into non voting securities by exercising special resolution majority voting power by a majority holder in terms of Section 114(1) of the Act read with Section 115(4) of the Act.
- (3) The words **"the greater part of the assets or undertaking"** in Section 117(1)(c)(i) of the Act mean either more than 50% of the gross assets measured at fair value (being total assets ignoring all liabilities) or more than 50% of the business measured as a going concern (being net assets supporting the business as a going concern).
- (4) The definition of **"offer"** in Section 117(1)(f) of the Act requires that any offer, possible offer or proposed offer is subject to the Takeover Regulations unless exempt by the Panel or the Act.

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- (5) The meaning of “control” in Section 2 of the Act is interpreted by the words “ability to materially influence” in Section 2(2)(d) of the Act as varying the meaning of the word “majority” in both Section 2(2)(a) and Section 2(2)(b) of the Act to mean “prescribed percentage”, and to ascribe the level of “50%” to the word “majority” in Section 2(2)(c) of the Act, thereafter ignoring any other meaning arising from Section 2(2)(d) of the Act.
- (6) Reference to -
- (a) a “**compliance order**” in section 119(5) must be regarded as referring to a compliance notice contemplated in section 171 (1);
- (b) a “**clearance notice**” in section 119 (4)(b) or 121(b)(i), or to a “**compliance notice**” in section 115(1)(b)(iii), must be regarded as referring to a compliance certificate contemplated in section 171 (6).
- (7) The definition of “**securities**” in Section 117(1)(j) of the Act includes securities with voting rights, convertible securities where possible future conversion would result in a beneficial interest in securities with voting rights and options where the possible future exercise would result in a beneficial interest in securities with voting rights.
- (8) Section 123(2)(a)(i) of the Act includes an affected transaction arising as a result of a reacquisition of voting securities effected by way of Section 114 of the Act.
- (9) The reference to subsection (4)(b) in Section 119(5) of the Act must be regarded as a reference to section 119 (4)(c).
- (10) A series of transactions is determined by applying the principles in Section 41(4)(b) of the Act.
- (11) The acquisition of a beneficial interest as contemplated in the definition of “affected transaction” in section 117(1)(c)(iv) will only give rise to a mandatory offer as contemplated in the definition of “affected transaction” in section 117(1)(c)(vi) if the acquisition complies with section 123(2) of the Act.
- (12) The definition of “**mandatory offer**” in section 117(1)(c)(vi) of the Act will not require compliance with section 117(1)(c)(vi) of the Act if any person, including concert parties, becomes entitled at any point in time (“the point in time”), to exercise voting rights which, at the point in time, exceed the prescribed percentage because of voting rights which accrue to such person as a result of a beneficial interest in preference shares, which preference shares had been acquired before the point in time, and such preference shares, at the point in time, give such person voting rights in accordance with the rights of the preference shares (e.g. arrear dividends); for so long as the person, including concert parties, does not acquire any further securities as defined in section 117(1)(j) of the Act.
- (13) The expression “**acted in concert**” in section 118(5) of the Act, which is not rebutted in terms of section 118(6) of the Act, will not require compliance with Section 117(1)(c)(vi) of the Act (“mandatory offer”) -

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- (a) for the duration of the option, if at the time of coming into concert (the date of grant of the option), each individual concert party person (the grantor and grantee) was entitled to exercise voting rights which were less than the prescribed percentage, and as a result of coming into concert the concert party persons are entitled, in aggregate, to exercise voting rights equal to or exceeding the prescribed percentage, for so long as no individual concert party person acquires any further securities as defined in section 117(1)(j) of the Act;
  - (b) for the duration of the option, where at the time of coming into concert (the date of grant of the option), the grantee was already entitled to exercise voting rights which were equal to or exceeded the prescribed percentage; or
  - (c) if, at the time of coming into concert (the date of grant of the option), the grantee was not entitled to exercise voting rights which were equal to or exceeded the prescribed percentage, but the grantor was entitled to exercise voting rights which were equal to or exceeded the prescribed percentage, until the grantee exercises the option and/or acquires securities entitling the grantee to exercise voting rights equal to or exceeding the prescribed percentage.
- (14) To the extent that an amalgamation or merger employs the either or both types of mechanics of the fundamental transactions described in sections 112 or 114 (included as affected transactions in section 117 of the Act), the same Takeover Regulations applicable to section 117(1)(c)(i) of the Act or to section 117(1)(c)(iii) of the Act will apply to section 117(1)(c)(ii) of the Act.

**89. Beneficial interests**

- (1) For purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, the acquisition of a beneficial interest in the remaining voting securities as contemplated in the definition of “affected transaction” in section 117(1)(c)(v) of the Act will only give rise to compliance with Part B and Part C of Chapter 5 of the Act and the Takeover Regulations where an offer is made for all of the securities of a particular class of voting security not already beneficially held, irrespective of how many securities of the particular class are beneficially held before the offer.
- (2) The definition of “holder” in section 117(1)(e) of the Act read with the definition of “beneficial interest” in section 1 of the Act includes nominee entities, asset managers and similar persons who have authority, by any means, to exercise rights of disposal or rights of voting with respect to securities.

**90. Acting in concert**

- (1) For purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, the definition of “act in concert” in section 117(1)(b) of the Act will not require compliance with section 117(1)(c)(vi) of the Act (“mandatory offer”) where, at the time of coming into concert, each individual concert party person was entitled to exercise voting rights which were less than the prescribed percentage, and as a result of coming into concert the concert party persons are entitled, in aggregate, to



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exercise voting rights exceeding the prescribed percentage, for so long as no individual concert party person acquires any further securities as defined in section 117(1)(j) of the Act.

- (2) The definition of “act in concert” in section 117(1)(b) of the Act requires persons coming into concert to each make such declaration, on the prescribed form, to the regulated company concerned and to the Executive Director within five business days of coming into concert.
- (3) When persons acting in concert come out of concert, such persons must each make such declaration, on the prescribed form, to the regulated company concerned and to the Executive Director within five business days of coming out of concert.
- (4) If the Panel is aware of persons coming into concert or coming out of concert, and those persons have not declared themselves as having come into concert or coming out of concert in the prescribed manner in terms of sub-regulation (2) or (3), respectively, the Panel may presume those persons came into concert or came out of concert from a date determined by the Panel as being the date of coming into concert or coming out of concert (“determined date”) and the Takeover Regulations shall be enforceable from such determined date.
- (5) A presumption of coming into concert or coming out of concert in terms of sub-regulation (4) is rebuttable in a hearing before the Executive Director. The Executive Director shall issue a Ruling, which will be binding on all persons concerned. If any person concerned does not comply with such Ruling it may be re-issued immediately as a compliance notice.
- (6) The following persons are presumed to be acting in concert with one another unless the contrary is established by any such person, namely:
  - (a) a company, with:
  - (b) any of its directors;
  - (c) any company controlled by one or more of its directors;
  - (d) any trust of which any one or more of its directors is a beneficiary or a trustee; and
  - (e) any of the company’s pension, provident or benefit funds and share incentive schemes.

**91. Application of Parts B and C of Chapter 5 of the Act, and the Takeover Regulations, to private companies**

For the purposes of the Part B and Part C of Chapter 5 of the Act and the Takeover Regulations:

- (a) the measurement of transfers for purposes of the inclusion of private companies as regulated companies in terms of section 118(1)(c)(i) of the Act,

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is determined by calculating the percentage at the time of each qualifying transfer (being all transfers excluding transfers between or among related or inter-related persons) in the prior 24 months, taking account of the number of securities transferred compared to the number of securities in issue (excluding treasury securities held by subsidiaries) at that time, and aggregating all such transfers just prior to effecting an affected transaction;

- (b) a buy back of securities by a company that are cancelled is not a transfer. A buy back of holding company securities by a subsidiary company is considered to be a transfer among related parties.

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Regulation 92-r93

**Part B – Fundamental transactions**

**92. Fundamental transactions**

- (1) A special resolution contemplated in section 112 (3) or 113 (5) must be -
  - (a) published in accordance with regulation 6 (b) and (c); and
  - (b) delivered to shareholders of the company concerned.
- (2) A notice to creditors contemplated in section 116 (1)(a) must be -
  - (a) published in accordance with regulation 6 (b) and (c); and
  - (b) delivered to known creditors of the company concerned.
- (3) A Notice of Amalgamation or Merger contemplated in section 116(3) must be in Form CoR 92.

**93. Independent Experts**

*Authority s. 117(1)(c)(i)(c)*

- (1) In terms of section 117(1)(c)(i) of the Act, for purposes of Part B and Part C of Chapter 5 of the Act and the Takeover Regulations, an offeree regulated company must retain an independent expert who must -
  - (a) be qualified, and have the competence and experience necessary to:
  - (b) understand the type of disposal proposed;
  - (c) evaluate the consequences of the disposal; and
  - (d) assess the effect of the disposal on the value of securities and on the rights and interests of a holder of relevant securities, or a creditor of the company;
  - (e) be able to express opinions, exercise judgment and make decisions impartially;
  - (f) not have any other relationship with the offeree regulated company or with the offeror, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of such independent expert is compromised by that relationship;
  - (g) not have had any relationship contemplated in subparagraph (iii) within the immediately preceding two years; and
  - (h) not be related to a person who has or has had a relationship contemplated in subparagraphs (iii) or (iv).
- (2) The independent expert retained in accordance with sub-regulation (1) must prepare a report to the independent board, and cause it to be distributed to all holders of the

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## Regulation 93

offeree regulated company's securities, concerning the proposed disposal, which must:

- (a) state all prescribed information relevant to the value of the securities affected, on an attributable basis (being the attributable fair value per offeree regulated company security calculated from a valuation of the underlying assets/undertaking disposed of divided by the offeree regulated company's relevant securities in issue compared to the disposal consideration receivable for the assets/undertaking to be disposed of per offeree regulated company security), in accordance with Regulation 107;
  - (b) identify every type and class of holders of the offeree regulated company's securities affected by the proposed disposal;
  - (c) describe the material effects that the proposed disposal will have on the rights and interests of the persons mentioned in paragraph (ii);
  - (d) evaluate the effects of the proposed disposal on the business and prospects of the offeree regulated company;
  - (e) state any material interest of any director of the offeree regulated company or trustee for security holders, and state the effect of the disposal on those interests and persons.
- (3) In terms of section 117(1)(c)(v) of the Act, for purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, an offeree regulated company must retain an independent expert who must:
- (a) be qualified, and have the competence and experience necessary to:
  - (b) understand the type of offer proposed;
  - (c) evaluate the consequences of the offer;
  - (d) assess the effect of the offer on the value of securities and on the rights and interests of a holder of relevant securities;
  - (e) be able to express opinions, exercise judgment and make decisions impartially;
  - (f) not have any other relationship with the offeree regulated company or with a proponent of the offer, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of such independent expert is compromised by that relationship;
  - (g) not have had any relationship contemplated in subparagraph (iii) within the immediately preceding two years; or
  - (h) not be related to a person who has or has had a relationship contemplated in subparagraphs (iii) or (iv).

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- (4) The independent expert retained in accordance with sub-regulation (1) must prepare a report to the independent board, and cause it to be distributed to all holders of the offeree regulated company's securities, concerning the proposed offer, which must:
- (a) state all prescribed information relevant to the value of the securities affected by the offer;
  - (b) identify every type and class of holders of the offeree regulated company's securities affected by the offer;
  - (c) describe the material effects that the offer will have on the rights and interests of the persons mentioned in paragraph (ii);
  - (d) evaluate any material adverse effects of the offer against:
  - (e) the compensation that any of those persons will receive in terms of that offer; and
  - (f) any reasonably probable beneficial and significant effect of that offer on the business and prospects of the offeree regulated company; and
  - (g) state any material interest of any director of the offeree regulated company or trustee for security holders, and state the effect of the offer on those interests and persons.

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Regulation 94-r96

**Part C – Affected Transactions**

**94. Confidentiality**

*Authority s. 119(1)(a)(ii)*

- (1) Confidentiality shall be observed before a firm intention announcement or cautionary announcement containing “price sensitive information” is made. Price sensitive information is as defined in the JSE Listings Requirements and also satisfies the definition of inside information in the Securities Services Act, 2004.
- (2) All negotiations between an independent board and an offeror must be kept confidential. An independent board should be cognisant of the fact that confidentiality may only be able to be maintained for a short period of time, and sometimes not at all.
- (3) If there is reasonable suspicion of a leak of price sensitive information, that information must immediately be disclosed in a cautionary announcement.

**95. The approach**

*Authority s. 119(1)(a)(i)*

- (1) An approach with a view to an offer being made, or an offer when made, shall be put forward to the board of the offeree regulated company.
- (2) An offer shall not be subject to conditions which depend solely on subjective judgments by the directors (or equivalent) of the offeror or the fulfilment of which is in their hands.
- (3) If the offer, or an approach with a view to an offer being made, is not made by the ultimate offeror or potential offeror, the identity of that person shall be disclosed when the offer is put forward to the board of the offeree regulated company.
- (4) A board of an offeree regulated company approached, with a view to an offer being made, is entitled to be satisfied on reasonable grounds that the offeror is, or will be, in a position to implement the offer in full.
- (5) A board of an offeree regulated company that has received an offer shall be provided with evidence acceptable to the board that the offeror is in a position to implement the offer in full.

**96. Partial Offers**

*Authority s. 117(1)(h)(i)*

- (1) A partial offer is an offer made to all holders of a particular class of securities for the acquisition of the same pro rata percentage of such class of securities, which is a lesser percentage than 100 percent of such securities (“partial offer percentage”), provided that any holder who tenders a number of securities:

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Regulation 97-r98

- (a) equal to or less than the partial offer percentage, must have its tender accepted in full; or
  - (b) greater than the partial offer percentage, must have that number of securities equal to the partial offer percentage accepted in full, and part or all of the excess tendered balance accepted on an equitable basis, provided that the aggregate of the acceptances shall not exceed the partial offer percentage.
- (2) The definition of “**partial offer**” in Section 117(1)(h) of the Act will not give rise to compliance with Part B and Part C of Chapter 5 of the Act and this Chapter -
- (a) if an offeror beneficially holding securities of a class entitling the offeror to exercise less than the prescribed percentage of voting rights makes a partial offer to acquire that number of relevant securities which will, if such partial offer is successfully completed, result in such offeror still only holding a beneficial interest in securities entitling the offeror to still only be able to exercise less than the prescribed percentage of voting rights; or
  - (b) if an offeror already holds securities entitling the offeror to exercise voting rights which exceed the prescribed percentage and a partial offer is made for less than all the remaining securities of a class, which if successful, would result in the offeror increasing its voting rights entitlement to a level less than 100% of the voting rights.
- (3) Regulation 93 (3) and (4) apply to Section 117(1)(h) of the Act.

**97. Mandatory offers**

The percentage to be prescribed in terms of section 123 is 35% of the issued voting securities of the company.

**98. Cautionary and other announcements**

*Authority s. 119(1)(a)(iii)*

- (1) A cautionary announcement is as defined in the JSE Listings Requirements, except that the concept of “material price sensitive information” is replaced with price sensitive information, notwithstanding that an offeree regulated company may not be listed. The price sensitive information would concern a possible or proposed offer which is the subject of negotiations.
- (2) The responsibility to publish a cautionary announcement rests with the offeree regulated company or offeror, as applicable.
- (3) An independent board should disclose as much detailed information as soon as possible concerning an offer.
- (4) An independent board must do all things necessary to satisfy itself that an offeror is able to perform in terms of an offer.

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Regulation 99

- (5) Information provided to select offeree regulated company securities holders must be disclosed equally and immediately to all other securities holders, and in the case of a public company to the general public, in the appropriate manner.
- (6) An independent board must ensure that all material changes to previously announced specific information concerning an offer is immediately announced.
- (7) In order for any incorrect statement made in relation to an offer to not become enforceable or binding, such statement must immediately be repudiated by all reasonable means by the person(s) who made such statement.

**99. Firm intention announcement**

*Authority s. 119(1)(a)(iv)*

- (1) A firm intention announcement is an announcement which must be made when a mandatory offer is required or when an offeror has a firm intention to make an offer and is ready, able and willing to proceed with such offer. When a firm intention announcement has been made, the offeror shall proceed with the offer.
- (2) A firm intention announcement shall immediately be made when -
  - (a) the board of the offeree regulated company has received a formal written offer; or
  - (b) a mandatory offer is required to be made in terms of Section 117(1)(c)(vi) of the Act read with Section 123 of the Act.
- (3) The responsibility for making a firm intention announcement under -
  - (a) sub-regulation (2)(a) rests with the independent board, failing which, with Panel approval, shall rest with the offeror; or
  - (b) sub-regulation (2)(b) rests with the offeror.
- (4) Each firm intention announcement must state that the offeror, and where appropriate, the independent board, accepts responsibility for the information contained in the firm intention announcement and that to the best of their knowledge and belief, the information is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the importance of such information. If it is proposed that any director shall be excluded from such a statement, the omission and the reasons for it shall be stated in the firm intention announcement.
- (5) A firm intention announcement must contain the following information:
  - (a) the terms of the offer, including but not limited to:
    - (i) the type of offer proposed and mechanics of implementation;
    - (ii) the class or classes of securities affected;



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Regulation 100

- (iii) the consideration offered per security, for each class;
- (iv) pro forma earnings and asset value per offeree regulated company security if the offer consideration consists wholly or partly in offeror securities;
- (v) any conditions as to acceptance, or other conditions of the offer;
- (vi) details of the cash guarantee or cash confirmation provided to the Panel in conformity with Regulation 101 (3);
- (vii) confirmation that the offeror has sufficient securities available to settle any consideration payable in securities or has a condition as to acceptance regarding an increase of authorised share capital;
- (viii) estimated offeror offer circular or combined circular posting date, and where known, other pertinent dates relating to the offer;
- (b) the identity of the offeror and any concert parties;
- (c) if known, details of any beneficial interest in the offeree regulated company -
  - (i) held or controlled, directly or indirectly, by the offeror;
  - (ii) held or controlled, directly or indirectly, by any person(s) acting in concert with the offeror;
  - (iii) held or controlled, directly or indirectly, by any other person in respect of which the offeror has received an irrevocable commitment to accept or vote in favour of the offer;
  - (iv) in respect of which the offeror holds an option to purchase; or
  - (v) in respect of which any person acting in concert with the offeror holds an option to purchase.

**100. Dealings disclosure and announcement**

*Authority s. 119(1)(a)(v)*

- (1) During an offer period allowable dealings (being dealings, inter alia, in securities not in contravention of Section 127(2) of the Act) in securities of the offeror or the offeree regulated company by an offeror or the offeree regulated company, and/or by their respective concert party/ies shall be both disclosed to the Panel on form TRF 2 and announced (detailing the TRF 2 information) when effected -
- (a) by a person with a beneficial interest (i.e. beneficial interest dealt for own account or dealt for another person in terms of any form of mandate); or
  - (b) on an agency basis (i.e. beneficial interest of a client, dealt for a client on client instruction).

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## Chapter 5 - Fundamental Transactions and Takeover Regulations : Part C – Affected Transactions

## Regulation 101

**101. Securities acquisition during offer**

- (1) Except for prohibited acquisitions in terms of Section 127(2)(b) of the Act, acquisitions of securities in an offeree regulated company, which is or may be the subject of an offer, may be made prior to or during an offer period without Panel consent.
- (2) If an offer is made and the offeror or any person acting in concert with it has acquired relevant securities in the offeree regulated company within the six month period before the commencement of the offer period, the offer consideration, per security, to the offeree regulated company's holders of securities of the same class must be -
  - (a) identical to, or where appropriate, and with Panel consent, similar to, the highest consideration paid (excluding commission, tax and duty) for such acquisitions;
  - (b) accompanied by a cash consideration, at not less than the highest cash consideration paid per security (excluding commission, tax and duty) where securities were acquired for cash which carry 5% or more of the voting rights currently exercisable at a class meeting of that class.
- (3) If the offeror considers that the highest consideration per relevant security paid ought not to apply in a particular case, the offeror may consult the Panel, which in its discretion may agree to an adjusted offer consideration.
- (4) When an offer consideration is wholly or partly in cash, the offeror offer circular shall include a statement that the Panel has been provided with -
  - (a) an irrevocable unconditional guarantee issued by a South African registered bank; or
  - (b) an irrevocable unconditional confirmation from a third party that sufficient cash is held in escrow;in favour of the holders of relevant securities for the sole purpose of fully satisfying the cash offer commitments.
- (5) A guarantee or confirmation contemplated in sub-regulation (4) shall be written in such form that the Panel is empowered to exercise the guarantee or confirmation, in whatever manner is required, on behalf of all holders of relevant securities once all conditions have been satisfied and the offeror and its concert parties have failed to pay the cash consideration owing to holders of relevant securities entitled thereto by the due date.
- (6) If, after the firm intention announcement and before the offer closes, an offeror or any person acting in concert with it acquires relevant securities in the offeree regulated company at above the offer consideration per relevant security, the offeror shall increase the offer consideration per security to not less than the highest consideration paid for the securities so acquired. Immediately thereafter, an

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announcement shall be made detailing the revised offer consideration per relevant security and relevant dates, which announcement shall be posted to the offeree regulated company's relevant securities holders.

- (7) An offeror may require a holder of relevant securities of an offeree regulated company that is the subject of an offer, as a stated term of acceptance, until acceptance is withdrawn in terms of Regulation 103 to give the offeror a proxy to vote in respect of those securities -
  - (a) if the offer is conditional, on all matters in order to satisfy any announced conditions of the offer; or
  - (b) if the offer is unconditional, on all matters.
- (8) Parties to an offer must take care not to issue statements which, while not factually inaccurate, may mislead holders of relevant securities and the market or may create uncertainty.
- (9) If a profit forecast or estimate ("forecast(s)", as defined in the Revised Guide on Forecasts issued by the South African Institute of Chartered Accountants ("SAICA"), as amended from time to time ("the Forecast Guide")), including for the avoidance of doubt, trading statements, general forecasts and specific forecasts as defined in the JSE Listings Requirements, as amended from time to time, is made on or after the date of publication of a firm intention announcement -
  - (a) by an offeree regulated company, involved in an offer, on itself or on the offeror; or
  - (b) by an offeror, involved in an offer, on itself or on the offeree regulated company;

any such forecast must be prepared in accordance with the Forecast Guide and reported upon by an auditor, or a similar professional registered with regulatory or professional body for auditors in another jurisdiction.

**102. Circulars**

- (1) An offeror offer circular shall contain the following disclosures and information -
  - (a) the same disclosure contents as required in Regulation 99 (5)(a), excluding pro forma per security disclosure, and Regulation 99 (5)(b);
  - (b) a statement that the offeror accepts responsibility for the information contained in the offeror offer circular and that to the best of its knowledge and belief, the information contained in the offeror offer circular is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the importance of such information. If any director (or equivalent) of the offeror is excluded from such a statement, the omission and the reasons for such exclusion shall be stated in the offeror offer circular;

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- 
- (c) where the offer consideration consists wholly or partly of offeror securities -
- (i) the annual financial statements of the offeror for the last three financial periods in IFRS interim reporting format;
  - (ii) an audit reviewed pro forma balance sheet and pro forma income statement (and pro forma earnings and assets per security) assuming a 100% successful offer result as at the last completed financial year/period.
- (d) the reasons for the offer and the offeror's intentions regarding the continuation of the business of the offeree regulated company and the continuation in office of the directors of the offeree regulated company;
- (e) in a highly-leveraged offer (that is where, as a result of the offer, the offeror will incur a high level of debt and the payment of interest, repayments or security for the debt will substantially depend on the business of the offeree regulated company) a description of the financing arrangements entered into by the offeror, including capital amount, interest rate, security given, period and repayment terms;
- (f) statements of direct and indirect beneficial interests in or holdings of securities, or actions to be effected, or a negative statement if there are no such interests or holdings -
- (i) by the offeror, including separate disclosure of concert party holdings, in the offeree regulated company;
  - (ii) by directors (or equivalent) of the offeror in the offeror's securities and in any of the offeree regulated company's securities;
- in the offeror and in the offeree regulated company by any person who, prior to the posting of the offeror offer circular, has irrevocably committed himself to accept or to reject the offer or to vote in favour of or against the offer, together with the name of such person;
- (g) if any party whose holdings of securities are required to be disclosed by this Regulation has dealt for value in the securities in question during the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the offeror offer circular, the details, including volumes, dates and prices, shall be stated. If no such dealings have taken place this fact shall be stated;
- (h) whether and in what manner the remuneration of the offeree regulated company's directors will be affected by the offer or by any other associated transaction. If there will be no effect, this shall be stated;
- (i) a statement on whether or not any agreement exists between the offeror, or any person acting in concert with the offeror, and -

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- (i) the offeree regulated company;
  - (ii) any of the directors of the offeree regulated company, or persons who were directors within the preceding 12 months of the offeree regulated company; or
  - (iii) holders of offeree regulated company securities, or persons who were holders thereof within the preceding 12 months;
- and full particulars of any such agreement;
- (j) all pertinent dates and times having relevance to a full understanding of the offer;
  - (k) the fair and reasonable opinion provided, in conformity with the applicable disclosure requirements in Regulation 107 and the offeror board opinion after taking account thereof where the offer consideration comprises wholly or partly offeror securities in compliance with Regulation 106 (8) and
  - (l) a statement to the effect that settlement of the offer consideration to which any holder is entitled under the offer will be implemented in full in accordance with the terms of the offer without regard to any lien, right of set-off, counterclaim or other analogous right to which the offeror may otherwise be, or claim to be, entitled against such holder.
- (2) An offeree response circular shall contain the following disclosures and information by the independent board -
- (a) its views on the offer and offer consideration, including any other offers received during the offer period and six months prior to the offer period;
  - (b) insofar as is relevant, comment upon the statements contained in the offeror offer circular;
  - (c) a statement that it accepts responsibility for the information contained in the offeree response circular and that to the best of its knowledge and belief, the information contained in the offeree response circular is in accordance with the facts and, where appropriate, that it does not omit anything likely to affect the importance of such information. If any director of the independent board is excluded from such a statement, the omission and the reasons for such exclusion shall be stated in the offeree response circular;
  - (d) financial information as follows -
    - (i) the annual financial statements of the offeree regulated company for the last three financial years/periods, and if completed, the latest interim results, in IFRS interim reporting format, without audit review;
    - (ii) in respect of an offer where offeree regulated company holders continue to hold some form of security post the offer, an audit reviewed pro

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forma income statement and balance sheet must be produced as at the last financial year/period ended of the offeree regulated company (and the pro forma effects per offeree regulated company security) must be disclosed;

- (e) statements of direct and indirect beneficial interests in or holdings of securities, and/or actions to be effected, or a negative statement if there are no such holdings:

- (i) by the offeree regulated company in the offeror;
- (ii) by directors of the offeree regulated company in the offeror and in any of the offeree regulated company's securities;

in the offeror and in the offeree regulated company by any person who, prior to the posting of the offeree response circular, has irrevocably committed himself to accept or to reject the offer or to vote in favour of or against the offer, together with the name of such person;

- (f) if any party whose holdings of securities are required to be disclosed by this Takeover Regulation has dealt for value in the securities in question during the period beginning six months prior to the offer period and ending with the latest practicable date prior to the posting of the offeree response circular, the details, including volumes, dates and prices, shall be stated. If no such dealings have taken place this fact shall be stated;
- (g) whether the directors of the offeree regulated company intend, in respect of their own beneficial holdings of relevant securities, to accept or to reject the offer, or to vote in favour of or against the offer;
- (h) material particulars of all service contracts of any director or proposed director of the offeree regulated company with such offeree regulated company or with any of its subsidiaries. If there are no such service contracts, this should be stated. If any service contract has been entered into or amended within six months of the date of the offer period, particulars shall be given in respect of such contracts or amendments. If there have been no such service contracts entered into or amended, this should be stated.
- (i) a statement on whether or not any agreement exists between the offeree regulated company and:
- (i) the offeror or any of its concert parties;
  - (ii) any of the directors (or equivalent) of the offeror, or persons who were directors (or equivalent) within the preceding 12 months; or
  - (iii) holders of offeror securities or a beneficial interest in the offeror, or persons who were holders thereof or interested therein within the preceding 12 months;

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and full particulars of any such agreement;

- (j) the fair and reasonable opinion provided, in conformity with the applicable disclosure requirements in Regulation 107 and the independent board opinion after taking account thereof in compliance with Regulation 106.
- (3) A combined offer circular shall contain the information contained in Regulation 102.
- (4) Circulars subsequently sent to holders by an offeror or offeree regulated company shall contain details of any material changes to prior published information or a statement that there has been no material change.
- (5) The following documents must lie for inspection at the offeror and/or offeree regulated company's registered office, as applicable, from the date of posting of a circular until the end of the offer period -
  - (a) where a forecast has been made, the reporting accountant's report and consent letter;
  - (b) where pro forma information has been disclosed, the audit review opinion and consent letter;
  - (c) any document evidencing an irrevocable commitment to accept or to reject or vote in favour of or against an offer;
  - (d) the respective memorandum of incorporation of the offeree regulated company and of the offeror if the offer consideration includes offeror securities;
  - (e) the issued annual financial statements of the offeree regulated company, and, where the offer consideration includes offeror securities, also the offeror company, for the last three completed financial years.

**103. Timelines of offers**

***Authority s. 119(1)(b)(ii)***

- (1) An offeror offer circular or combined offer circular shall be posted within 20 business days after the date of publication of a firm intention announcement.
- (2) The opening date of an offer relating to a general offer, mandatory offer or partial offer shall be the day after the date of posting of an offeror offer circular or combined offer circular.
- (3) An offer relating to a general offer, mandatory offer or partial offer shall be open for at least 30 business days.
- (4) An offer relating to a general offer, mandatory offer or partial offer shall state a closing date or an initial closing date (which reserves the right to extend) or an objective method of determination of a closing date where no closing date or initial closing date is stated. With respect to an offeree regulated company that is listed on an exchange, the closing date shall be on a Friday.

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- (5) An offeror shall not be entitled to extend a general offer after the 45th day after the opening of such general offer (whether the offer consideration is revised or not), and such offer shall therefore terminate, unless such general offer has been declared unconditional as to acceptance at midnight on the 45th business day after the opening of such offer unless -
- (a) a firm intention of a competing offer has been announced (in which case the original offeror will be entitled from time to time to extend the time periods of its offer to coincide with the time periods applicable to the competing offeror's offer); or
  - (b) the independent board has consented to an extension.
- (6) On the 45th business day after the day upon which a conditional general offer opened an announcement shall be made by no later than 18:00 as to whether the offer is unconditional as to acceptances or has terminated.
- (7) When an offer becomes unconditional as to acceptances the offeror shall announce that fact within one business day and the announcement shall include the total number and percentage of securities -
- (a) for which acceptances have been received; and
  - (b) which are held by the offeror at that time.
- (8) Where a general offer has been accepted by a holder and such general offer has been declared unconditional as to acceptances but such general offer still remains subject to other conditions, such holder may, by notice in writing delivered to the offeror, withdraw its acceptance if such general offer is not declared wholly unconditional by midnight on the 65th business day after it opened.
- (9) After withdrawal of an acceptance as provided in sub-regulation (8) and prior to the closing date of such general offer, a holder may again accept the general offer in the manner provided in terms of the general offer. Such withdrawal and reacceptance may only occur once.
- (10) After an offer relating to a general offer, mandatory offer or partial offer has become unconditional it shall be announced as being unconditional within one business day. The then unconditional offer shall remain open for not less than 10 business days after such announcement.
- (11) An offer relating to a section 117(1)(c)(i) disposal, section 117(1)(c)(ii) amalgamation or merger or section 117(1)(c)(iii) scheme of arrangement shall state an expected effective or operative date or an objective method of determination of the effective/operative date where no expected effective or operative date is stated.
- (12) An offer relating to a general offer, mandatory offer or partial offer may be extended prior to the initial closing date (and time) of the offer, and if so, shall be announced prior to the initial closing date (and time) occurring. An offeror shall only be allowed to extend an offer relating to a general offer, mandatory offer or partial offer where



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the right to do so has been specifically reserved in the offeror offer circular or combined circular, and such right has not subsequently been withdrawn by the offeror, If “no extension statements” in relation to the offer are included in announcements, circulars or any statement by or on behalf of an offeror, its directors (or equivalent) or advisers, and not withdrawn immediately if incorrect, then the offer may not subsequently be extended.

- (13) An offeror offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of the offeror.
- (14) A combined offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of both the offeror and the independent board.
- (15) An offer circular relating to a section 117(1)(c)(i) of the Act disposal, Section 117(1)(c)(ii) of the Act amalgamation or merger or section 117(1)(c)(iii) of the Act scheme of arrangement is the -
  - (a) responsibility of the independent board if the proposed affected transaction is for a 100% beneficial interest or a 100% assets/undertaking acquisition by an offeror payable in cash or cash equivalents;
  - (b) responsibility of the independent board and the offeror if the proposed affected transaction is for a 100% beneficial interest or a 100% asset/undertaking acquisition by an offeror payable in offeror securities;
  - (c) responsibility of the independent board and the offeror if the proposed affected transaction is an acquisition for less than 100% of a beneficial interest or less than 100% of the assets/undertaking by an offeror payable in offeror securities.
- (16) Within 20 business days after an offeror offer circular has been posted, the independent board shall post the offeree response circular.
- (17) The consideration shall be settled within six business days of an offer being declared wholly unconditional and acceptance thereof by a holder, whichever is the later.
- (18) With respect to an exchange timetable regarding offers, the closing date of an offer is also the last day to trade and holders shall accordingly -
  - (a) be entitled to acquire securities up to and including the closing date of an offer; and
  - (b) be able to accept an offer in respect of all securities beneficially held, or acquired, up to and including the closing date of an offer.
- (19) An offer consideration may only be revised by announcing -
  - (a) an increase in the original announced offer consideration(s); or
  - (b) an alternate consideration to the original announced offer consideration (i.e. adding a share or cash consideration);

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collectively defined as the “revised offer consideration”.

- (20) The revised offer consideration announcement content shall comply with the requirements of a firm intention announcement.
- (21) If an offer consideration is revised, the offer shall be kept open for at least 15 business days following the date on which the revised offer consideration is announced, which announcement shall be posted to the offeree regulated company’s relevant holders.
- (22) If an offer consideration is revised, all holders of relevant securities who have accepted the initial offer consideration shall be entitled to revise their initial acceptance and elect to receive the revised offer consideration.
- (23) No announcement revising an offer consideration(s) shall be posted on or after the 45th business day after an offer has opened unless such offer is unconditional as to acceptances.
- (24) If “no increase statements” in relation to the offer consideration such as “the offer consideration will not be further increased” or “our offer consideration remains at x cents per security and it will not be raised” are included in announcements, circulars or any statement by or on behalf of an offeror, its directors (or equivalent) or advisers, and not withdrawn immediately if incorrect, then the offer consideration may not subsequently be increased.
- (25) An independent board shall announce a response to a revised offer consideration announcement within five business days detailing its opinion and the opinion of its independent expert concerning the revised offer consideration(s) and any other details considered pertinent by such board.
- (26) Before an offer may be implemented or given effect to, the Panel must issue a compliance certificate against request.

**104. Duties of directors of offeree regulated companies***Authority s. 119(2) and 119(1)(c)(i)*

- (1) Offers require the expansion of a director’s duty of good faith in terms of the “Standards of directors’ conduct” in section 76 of the Act to include the general body of the offeree regulated company’s securities holders concerned.
- (2) The directors of an offeree regulated company that is the subject of an offer shall not resign from the board of the offeree regulated company from the date of the firm intention announcement until the offer is declared unconditional or lapses or is withdrawn.
- (3) In an offer, and during the entire course of such offer, a director of an offeree regulated company, whether executive or non-executive, must fully disclose to the offeree regulated company board, any conflict of interest or potential conflict of interest, including its nature, in relation to such transaction. Such disclosure must be made immediately when the director becomes aware of any such conflict. In such a

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case, where the director considers that such conflict or potential conflict may affect his independence, the director concerned must declare himself non-independent.

- (4) If a director does not declare himself non-independent and the board of the offeree regulated company considers such director to be non-independent, the board must declare the director to be non-independent.
- (5) A non-independent director may not tender an opinion or vote on any matters at a meeting of the independent board, and must recuse himself from its deliberations. However, the independent board may determine the extent of his attendance at any of its meetings for a defined purpose, such as furnishing factual information.
- (6) The determination of independence affects primarily offeree regulated company directors but may also be relevant to offerors.
- (7) If an offeror is not a company, references to offeror directors apply equally to trustees of trusts, partners of partnerships, members of a consortium and similar personae.
- (8) The following situations are relevant in determining independence but are not considered to be exhaustive:
  - (a) A director who is a member of the boards of both an offeror and an offeree regulated company is presumed to be conflicted and non-independent, but such presumption is rebuttable at the instance of the independent board. If a director is declared independent by the independent board, the director is conflicted at the offeror board/management level, and vice versa.
  - (b) A director of an offeree regulated company who holds vested shares and/or options ("vested securities") in the offeree regulated company, which vested securities -
    - (i) have an intrinsic value (as defined by International Financial Reporting Statements) which represents a material amount of the director's net worth; and/or
    - (ii) represents a material holding in the offeree regulated company;is presumed to be conflicted and non-independent, but the presumption is rebuttable at the instance of the independent board.
  - (c) A director of an offeree regulated company is non-independent if the director -
    - (i) holds unvested securities or options, and who is offered any substitute share/option scheme, separate offer or acceleration of vesting periods which would give rise to a benefit in terms of an offer; or
    - (ii) is partial to the outcome of an offer because of an increased or decreased future benefit or loss of office or employment is non-independent.

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- (d) A director of an offeree regulated company who is related or inter-related to any person who is, or would be considered, non-independent in relation to an offeree regulated company concerned, in terms of an offer, is rebuttably presumed to be non-independent.
- (9) An independent board should comprise a minimum of three independent directors, and if there are less than three independent directors, other persons must be appointed to the independent board.

**105. Requisite knowledge of independent board members**

Each member of an independent board, and where applicable, an independent board of an offeror, must ensure that he has received all necessary information in order to provide a fully informed opinion to relevant securities holders concerning an offer and for that purpose must -

- (a) meet with all appointed advisers to be briefed on all details of the offer, including the offer mechanism, terms, conditions and other relevant information;
- (b) whilst respecting regulatory timetables, ensure that he has sufficient time to discharge all duties and responsibilities and resist haste and pressured time deadlines; and
- (c) ensure he is properly informed of the offeree regulated company's value per security or, where applicable, the offeror company's value per relevant security.

**106. Independent board opinion**

- (1) The independent board of an offeree regulated company that is the subject of an offer must obtain appropriate external advice from an independent expert in the form of a fair and reasonable opinion.
- (2) The independent board must take cognisance of the fair and reasonable opinion received in forming its own opinion on an offer consideration(s), which opinion must be communicated to the relevant offeree regulated company's holders.
- (3) In order to enable the independent board to express an opinion on an offer and on the offer consideration, it must either -
  - (a) perform a valuation of the offeree regulated company's securities that are the subject of an offer, including an attributable value per security where the offer is a disposal of assets or undertaking in terms of section 112 of the Act; or
  - (b) place reliance upon a valuation performed by the appointed independent expert on the offeree regulated company's securities that are the subject of an offer, including an attributable value per security where the offer is a disposal of assets or undertaking in terms of section 112 of the Act, after performing the

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requisite amount of work that satisfies the independent board that it is justified in placing reliance upon such valuation.

- (4) An independent board must form a clear basis for the expression of an opinion to relevant holders dealing with value and price compared to the consideration offered.
- (5) If the consideration offered per security exceeds either the estimated fair value per security or current traded price per security, but not both, a split opinion clearly detailing the independent board's view is required e.g. fair but not reasonable or reasonable but not fair.
- (6) An independent board must form a view of a range of fair value, based upon an accepted valuation approach, of the offeree regulated company securities. An offer with a consideration per offeree regulated company security within the fair value range is generally considered to be fair.
- (7) The independent board must consider factors that are difficult to quantify, or are unquantifiable, and must disclose any such factors (or state that there are none of which it is aware) and take them into account in forming its opinion in respect of fairness.
- (8) An offer with an offer consideration per offeree regulated company security above the offeree regulated company's traded security price at the time the offer consideration(s) per security was announced, or at some other more appropriate identifiable time, is generally considered to be reasonable.
- (9) An offer with an offer consideration comprising or including offeror company securities requires the independent board to carefully consider the price and value per security of the offeror's securities relative to the offeree regulated company securities. In such an offer, the offeror company must either -
  - (a) appoint an independent expert to provide a fair and reasonable opinion concerning the offeror company's relevant securities value and price to the independent board of the offeror company, the offeree regulated company's independent board and to the offeree regulated company's independent expert, in which case the independent board of the offeror company must express its opinion on the offeror company's securities value and price after considering the fair and reasonable opinion; or
  - (b) provide relevant information, as agreed between the parties, concerning the offeror company, directly to the independent board and to the offeree regulated company's independent expert, to enable the independent board and the offeree regulated company's independent expert to consider and opine on that information.
- (10) If the independent board is not unanimous in its opinion, all differing opinions of members, including reasons, must be provided to holders.

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**107. Independent expert**

- (1) The Act and the Takeover Regulations collectively require the appointment of an independent expert by an offeree regulated company and, where applicable, an offeror company (when offeror securities are offered as whole or part offer consideration), in regard to offers (being qualifying disposals, amalgamations or mergers, schemes of arrangement, general offers, mandatory offers, partial offers and comparable offers) and to provide a report in the form of a fair and reasonable opinion to the relevant board.
- (2) The independent expert's fair and reasonable opinion must address the same concepts of fairness and reasonableness described in Regulation 106.
- (3) The independence of the independent expert requires that the independent expert must not only be able to show that it is independent but must also take into account whether it will be perceived to be independent taking into account any other existing relationships and appointments.
- (4) The independent expert must satisfy the Panel that it is competent to act in respect of the offer, which the Panel may challenge if it is not satisfied.
- (5) Notwithstanding any prior approval given by the Panel, the Panel may at any time, either itself or in response to written representations by holders of relevant securities, require the appointment by either or both of the offeror and the offeree regulated company of a further independent expert approved by the Panel.
- (6) The independent expert's valuation of the offeree regulated company shall be performed in accordance with generally accepted valuation approaches and methods in use in the market from time to time including in order of preference -
  - (a) capitalisation, income or cash flow approach which relies on the 'value-in-use' principle and requires determination of the present value of future cash flows over the useful life of the asset or business;
  - (b) comparative or market approach which relies on the principle of 'willing buyer, willing seller' and requires that the amount obtainable from the sale of an asset or business is determined as if in an arm's-length transaction; and
  - (c) cost approach which relies on historical amounts spent on the asset or business.
- (7) In respect of mineral companies the valuation approach and methodology must comply with the SAMVAL code.
- (8) The content of the independent expert's fair and reasonable opinion in relation to an offer must, inter alia, include the following -
  - (a) the date of the fair and reasonable opinion and confirmation that the fair and reasonable opinion has been given to the relevant board concerned for the sole

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purpose of assisting the relevant board in forming and expressing an opinion for the benefit of holders, excluding the offeror;

- (b) a statement that the fair and reasonable opinion may be included, in whole or in part, in any required regulatory announcement or documentation;
- (c) a clear expression of opinion dealing with the fairness and reasonableness of the offer consideration(s) in regard to holders, excluding the offeror;
- (d) a detailed list of all source documentation used and reviewed and work done in accordance with the scope of the appointment;
- (e) the valuation approach adopted and method employed and all material assumptions underlying the valuation approach and methodology e.g. without being exhaustive, in the case of the capitalisation / income approach, the number of explicit forecast growth years, the in perpetuity formula employed post the growth years, the economic assumptions used such as revenue pricing and growth, expense pricing and growth, taxation, exchange rates, interest rates, the method of calculating free cash flows or future benefits, the forecast capital structure showing costs of equity and debt and weighted average cost of capital used to calculate discount rates, whether nominal or real discount rates and interest rates have been used;
- (f) a range of final valuation values attributable to the relevant securities and a most likely value used as the core number for purposes of the expression of the opinion;
- (g) any other valuation or pricing approaches and methodologies used in corroborating the expression of the opinion e.g. the comparative approach or cost approach;
- (h) the fee payable or paid to the independent expert for the fair and reasonable opinion and confirmation that the fee is not contingent on or related to the outcome of the offer; and
- (i) a declaration of the independence and competence of the independent expert, which may require evidential justification if the Panel is not satisfied with such declaration.

**108. Variation in offers**

- (1) If an offer (including a partial offer in terms of section 125(3) of the Act) is subject to any other condition(s), which offer, if successfully implemented, would result in a beneficial interest entitling an offeror and its concert parties to either -
  - (a) exercise voting rights exceeding the prescribed percentage for the first time; or
  - (b) exercise all voting rights of a particular class of security or all voting rights of all securities issued not already held, where voting rights exceeding the prescribed percentage were held pre the offer;

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## Regulation 109-r110

- (2) After an offer opening contemplated in sub-regulation (1), the offer is amended through any other conditions being varied by a regulatory authority, which variation requires or permits the acquisition of a lesser beneficial interest than originally included in the offer, the offeror and its concert parties must obtain the approval of the independent holders of more than 50% of the general voting rights of all issued securities of the offeree regulated company to approve such amended offer as a partial offer.
- (3) Failing such approval being obtained, within three months thereafter, the offeror and its concert parties shall dispose of that number of relevant securities which will either –
  - (a) reduce the beneficial interest voting rights to –
    - (i) a level less than the prescribed percentage; or
    - (ii) the beneficial interest level which existed prior to the original offer being made; and
  - (b) during such period of disposal, the offeror and its concert parties shall only be entitled to exercise voting power as does not exceed the levels in Regulation 108.

**109. Solicitation campaigns**

Persons conducting any solicitation campaign(s) in which holders of an offeree regulated company are contacted regarding an offer and their acceptance or voting in respect of such offer, shall only be provided with previously published information which remains accurate.

**110. Information to offerors**

- (1) Any information, including particulars of holders of relevant securities, given to a preferred offeror or potential offeror shall on request be furnished equally and as promptly to a less welcome but *bona fide* offeror or potential offeror (“the less welcome potential offeror”).
- (2) The directors of an offeree regulated company are entitled to test the *bona fide* nature of a less welcome potential offeror by requiring that at the same time the information is to be furnished by the offeree regulated company, equivalent information concerning the less welcome potential offeror be given to the offeree regulated company.
- (3) The directors of the offeree regulated company are also entitled to determine whether any approach is on a nominee basis for an undisclosed ultimate offeror or undisclosed ultimate indirect beneficial owner (“ultimate person”), in which case the less welcome potential offeror is the undisclosed ultimate person.



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Regulation 111-r112

**111. Effect of interests held by non-related persons**

- (1) If non-related persons own non-controlling beneficial interests in a regulated company and are not in concert, there are no consequences in terms of the Part B and Part C of Chapter 5 of the Act and this Chapter.
- (2) If one of the non-related persons acquires control of another non-related person, they become related persons, and in effect a first person has acquired control of a second person.
- (3) The consequences of the first person and the second person being related persons is that if the aggregated interests of the related persons (being the first person and the second person) in the regulated company are equal to or exceed the prescribed percentage of voting rights in the regulated company, an affected transaction has occurred and a mandatory offer (and if necessary, comparable offers) is required to be made to the holders of the remaining securities of the regulated company, by the first person, failing which, by the second person. For example, consider person A who owns a non controlling beneficial interest in person C and person B who owns a non controlling beneficial interest in person C, and persons A and B are not related and are not acting in concert. If person A then acquires a controlling interest in person B this will give rise to the requirement to make a mandatory offer (and if necessary, comparable offers) to the holders of person B (If person A made a general offer to the holders of person B then the achievement of control by person A of person B would occur only after a successful outcome). If, after person A acquires control of person B, the aggregate of the interests in person C held by persons A and B are equal to or exceed the prescribed percentage of voting rights in person C, then person A, and failing person A then person B, must make a mandatory offer (and if necessary, comparable offers) to the remaining holders of person C, and so on in an unbroken series.

**112. Change in control**

- (1) Where a change in control takes place in a pyramid or intermediate pyramid, the offeror shall make an offer or offers to holders of securities of such pyramid and/or intermediate pyramid, if any is a regulated company, and to holders of securities of the controlled company, excluding securities held by the pyramid or intermediate pyramid, applying the principles from mandatory offers and comparable offers. For example, consider pyramid A, which is a trust, which owns a controlling interest in non regulated company B, which is an intermediate pyramid and which, in turn owns a controlling interest in regulated company C, which is an intermediate pyramid, which in turn owns a controlling interest in regulated company D, which is the controlled company. If there is a change in control in pyramid A, the Takeover Regulations do not apply to pyramid A or to the intermediate pyramid B, because neither are regulated companies, but Part B and Part C of Chapter 5 of the Act and this Chapter apply to the intermediate pyramid C and the controlled company D, which means that the offeror must make separate mandatory offers (and comparable offers if applicable) to the holders of securities in intermediate pyramid C and to the holders of securities in controlled company D in accordance with principles regarding mandatory offers and comparable offers.

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Regulation 113-r115

**113. Offers by persons acting in concert**

***Authority s. 123(4)***

In addition to the offeror, each of the persons acting in concert with the offeror has the obligation to extend an offer.

**114. Waiver of mandatory offer**

***Authority s.123***

- (1) Following publication by a regulated company of a transaction requiring the issue of securities as consideration for an acquisition, a cash subscription or a rights offer which would result in an obligation to make a mandatory offer by an acquirer or a subscriber (including an underwriter), or by any of their respective concert parties, there shall be no such obligation to make a mandatory offer if there is a waiver thereof by the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company in accordance with the principles detailed in section 125(3)(b)(ii) of the Act.
- (2) Notwithstanding the fact that the issue of securities is made conditional upon a waiver by the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company, such waiver shall be nullified if any acquisitions are made by an acquirer or a subscriber (including an underwriter), or by any of their respective concert parties, in the period between the transaction announcement and date of the waiver.
- (3) At the date of obtaining the waiver, the acquirer or the subscriber (including an underwriter) concerned shall declare to the Panel on the prescribed form that it has not acquired any securities in breach of this Chapter.
- (4) A waiver requires a fair and reasonable opinion to be included in the circular in all instances other than a rights offer at a discount to the prevailing market price at the date of announcement.

**115. Comparable offers**

- (1) For purposes of section 125(2) of the Act -
  - (a) a mandatory offer in terms of section 123 of the Act, including a mandatory offer that is required to be made as a result of a reacquisition of securities in terms of section 48 or section 114 of the Act, will give rise to a comparable offer if the offeree regulated company has more than one class of security in issue and which are required to be dealt with in terms of section 125 of the Act;
  - (b) comparable offers will be required for all classes of issued security that have voting rights or could have voting rights in the future, including options. All schemes which are cash settled and have no present or future voting rights associated with them, such as cash settled phantom schemes and cash settled share participation rights schemes, which for settlement purposes, are

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Regulation 116-r118

dependent on a future security price or value of securities (which are the subject of an offer), must be taken account of and treated on an as equitable basis as the classes of security which are subject to a comparable offer;

- (c) the offer consideration(s) in a comparable offer is to be determined by the offeror taking account of the class of security to which the comparable offer is to be made. The fair and reasonable opinion given by the independent expert and the independent board opinion regarding the comparable offer must have the same opinions regarding fairness and reasonableness as the respective fair and reasonable opinions given by the independent expert and the independent board regarding the offer which gave rise to the comparable offer. For example, if an offer for ordinary shares in an offeree regulated company is opined upon as being fair and reasonable by an independent expert and as being fair and reasonable by the independent board, the respective opinions from the independent expert and from the independent board would likewise have to be fair and reasonable regarding a comparable offer. Similarly, an opinion from the independent expert stating an offer for ordinary shares was fair but not reasonable and the independent board's opinion stating that the offer was both fair and reasonable would require the same respective opinions regarding a comparable offer; and
- (d) Regulation 93 (3) and (4) apply to Section 125(2) of the Act.

**116. Consensual negotiations**

*Authority s. 126(1)*

- (1) Negotiations between a potential offeror and regulated company that are being pursued by both parties on a consensual basis give rise to the presumption that a bona fide offer might be imminent and in such circumstances the provisions of section 126 of the Act apply to the regulated company from the date of commencement of such consensual negotiations.
- (2) In the absence of consensual negotiations between a potential offeror and a regulated company, a regulated company that is the subject of rumour, speculation or even a cautionary announcement published by a potential offeror may presume that a bona fide offer is not imminent until a firm intention announcement is published.

**117. Acquisition of own securities by offeree**

- (1) An offeree regulated company and its subsidiary companies may not acquire the offeree regulated company's own securities without the prior written approval of the Panel, and the approval of the holders of relevant securities, or in terms of a pre-existing obligation or agreement entered into before the time contemplated in section 126(1) of the Act.

**118. Re-investment**

- (1) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, section 127(1) of the Act shall allow a re-investment alternative of the consideration

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## Regulation 119

offered (“re-investment consideration”) only to specific directors and management of an offeree regulated company provided that the Panel grants an exemption in accordance with section 119(6)(c) of the Act, which exemption may only be granted if -

- (a) a fair and reasonable opinion from an independent expert is obtained stating that the re-investment consideration is fair and reasonable to the independent shareholders of the offeree regulated company; and
  - (b) a majority vote of independent shareholders of the offeree regulated company is obtained in general meeting.
- (2) An independent board must establish and disclose any benefits offered to any offeree regulated company director or employee by an offeror.

**119. Sales during an offer period***Authority s.127(2)*

- (1) The Panel will not give consent for sales by an offeror or persons acting in concert with the offeror of offeree regulated company securities which are the subject of a mandatory offer during the offer period.
- (2) The Panel will only give consent for sales if -
  - (a) an offer, other than a mandatory offer, is being made; and
  - (b) the sale is not considered to be price manipulative and is considered justified in the circumstances.
- (3) Proposed sales that have been consented to by the Panel shall be made at the offer price.
- (4) The Panel shall require notice of any proposed sales, during an offer period, that it has consented to, to be published at least 24 hours in advance of selling stating:
  - (a) the name of the offeror or any person(s) acting in concert with the offeror that proposes to sell;
  - (b) the number or maximum number of securities that may be sold;
  - (c) the price, including a ratio arising from a securities swap, at which the number or maximum number of securities shall be sold, or alternatively, a statement that the price, including a ratio arising from a securities swap, at which the securities are sold, shall constitute the relevant offer price if an offer is made;
  - (d) that neither the offeror nor any persons acting in concert with the offeror shall acquire any securities in the offeree regulated company concerned during the offer period other than as contemplated in an offer subject to Part B and Part C of Chapter 5 of the Act and this Chapter; and

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Regulation 120-r121

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- (e) that an announcement(s) will be made detailing the number and price, including a ratio arising from a securities swap, of securities sold, within 24 hours of such sale(s) being effected.

**120. Waivers**

- (1) With respect to a waiver that is obtained in terms of R123(a), for a period of six months immediately following such waiver -
  - (a) the acquirer;
  - (b) the subscriber (including an underwriter);
  - (c) any person who is acting in concert with a person contemplated in paragraphs (a) or (b),

shall not make an offer to any holder of securities of the offeree regulated company, or acquire any interest in any such securities, on more favourable terms than those acquired or subscribed for in terms of the transaction in question.

**121. Appointments to board of offeree**

- (1) If an offeree regulated company is the subject of an offer and a firm intention announcement has been published, the offeror and its concert parties shall not, from the date of the firm intention announcement until the offer is declared unconditional or lapses or is withdrawn -
  - (a) appoint any persons to the board of an offeree regulated company;
  - (b) exercise votes attaching to any securities held in the offeree regulated company.

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Regulation 122-r124

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**Part D – Takeover Panel Procedures**

**122. General Authority of the Panel**

- (1) The Panel works on a day-to-day basis through its Executive Director, deputy Executive Director(s) and other officers and employees as contemplated in section 200 of the Act.
- (2) The Panel is empowered to co-operate with any regulatory bodies in or outside South Africa for the purpose of obtaining or furnishing information relevant to any aspect of the duties of the Panel or of such other regulatory bodies.

**123. All published documents to be approved**

*Authority s.119(4)(a)*

All documents, including announcements and circulars, must be approved by the Panel before posting or publication thereof.

**124. Consultations and Rulings**

- (1) Any person may approach the Panel through the Executive Director in accordance with section 201 of the Act.
- (2) Any advice given in a consultation with the Executive Director shall not have the effect of a Ruling and shall not bind the Panel in any way.
- (3) A Ruling may be made by the Executive Director upon written application or after a hearing.
- (4) All Rulings will be given taking account of the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable, for the Executive Director to exercise his powers without adherence to the principle of *audi alteram partem*. The requirements of confidentiality shall be respected unless the circumstances require otherwise.
- (5) Rulings will be given on the assumption that all information considered or provided is correct and complete. A Ruling may be formally withdrawn in the event that any information considered or provided proves to be incomplete or incorrect.
- (6) All Rulings which the Executive Director determines should be made available to the public, shall require publication of a notice, as directed by the Executive Director, stating that the Ruling has been placed on the Panel website. The operation of such a Ruling shall be suspended until any required notice is published. Failing compliance with the direction to Publish, the Executive Director shall procure publication of the notice at the expense of the relevant person.
- (7) Any person issued with a Ruling may -
  - (a) apply to the Takeover Special Committee for a hearing regarding the Ruling within:

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- (i) 5 business days after receiving that Ruling; or
  - (ii) such longer period as may be allowed on good cause shown; and
- (b) after considering any representations by the applicant and any other relevant information, the Takeover Special Committee may confirm, modify or cancel all or part of a Ruling.
- (8) If the Takeover Special Committee confirms or modifies all or part of a Ruling, the applicant must comply with that Ruling as confirmed or modified, within the time period specified in it.
- (9) A decision by the Takeover Special Committee in terms of this Takeover Regulation is binding, subject to any right of review or appeal by a court.

**125. Procedure before the Executive Director and Takeover Special Committee at hearings**

- (1) At any hearing before the Executive Director or the Takeover Special Committee:
  - (a) each party shall state its case in writing beforehand and shall be permitted to call such witnesses as may give relevant evidence and to present argument orally and/or in writing;
  - (b) neither the Executive Director nor the Takeover Special Committee shall be obliged to apply the law of evidence;
  - (c) all hearings will be heard in accordance with the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable, for the Executive Director or the Takeover Special Committee to exercise their powers without adherence to the principle of *audi alteram partem*,
- (2) Proceedings are informal.
- (3) The Executive Director or Takeover Special Committee, as the case may be, may call any evidence where it deems that course to be desirable. The proceedings of hearings may be recorded at the discretion of the Executive Director or Takeover Special Committee. Such recordings may be transcribed on such conditions as the Executive Director or Takeover Special Committee may prescribe.
- (4) The Executive Director or chairperson of the Takeover Special Committee shall control the proceedings at hearings and may, for each hearing, inter alia, prescribe the date and time of hearings and the time within which any particular action shall be taken.
- (5) All decisions, supported with reasons and a background summary of the matter, by the Executive Director or Takeover Special Committee shall be in writing and shall be given to the parties as soon as reasonably possible.
- (6) All decisions which the Executive Director or Takeover Special Committee determines should be made available to the public, shall require publication of a

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notice, as directed by the Executive Director or Takeover Special Committee, stating that the decision has been placed on the Panel website. Failing compliance with the direction to Publish, the Executive Director or Takeover Special Committee shall procure publication of the notice at the expense of the relevant person.

**126. Reviews**

- (1) Application for review of a compliance notice shall be noted within five business days of receipt of a compliance notice.
- (2) The Chairman of the Takeover Special Committee shall determine and control the proceedings at reviews and may, for each review, inter alia, prescribe the date and time of such review and the time within which any particular action shall be taken.
- (3) All decisions, supported with reasons and a background summary of the matter, by Takeover Special Committee shall be in writing and shall be given to the parties as soon as reasonably possible.
- (4) All decisions which the Takeover Special Committee determines should be made available to the public, shall require publication of a notice, as directed by the Takeover Special Committee, stating that the decision has been placed on the Panel website. Failing compliance with the direction to Publish, the Takeover Special Committee shall procure publication of the notice at the expense of the relevant person.

**127. Reporting to Panel**

- (1) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, -
  - (a) reporting compliance in terms of section 122(3)(a) of the Act requires completion and filing with the Panel of form TRF 1;
  - (b) reporting compliance in terms of section 122(3)(b) of the Act must take the form of an announcement (as defined in Part B and Part C of Chapter 5 of the Act and this Chapter).
- (2) Notwithstanding the fact that Section 122 of the Act does not require reporting compliance when a person disposes of a less than 1% interest of a class of securities which disposal moves such person's beneficial interest below a multiple of 5%, Part B and Part C of Chapter 5 of the Act and this Chapter require an announcement in the prescribed manner.
- (3) If a regulated company becomes aware that any required report has not been made, the company must lodge a complaint with the Panel in terms of Section 168 of the Act.

**128. Panel Services, fees and levies**

- (1) The services provided by the Panel fall into the following categories:



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- (a) providing verbal information and advice of a preliminary and general nature on the provisions of Chapter 5 of the Act and the Regulations;
  - (b) consultations from which specific or general, verbal or written, advice is provided which is non binding and does not constitute a Ruling;
  - (c) rulings issued in specific matters;
  - (d) examination of documents submitted for the Panel's approval;
  - (e) hearings and reviews.
- (2) The fees and levies chargeable for the Panel's services are as set out in Annexure 2 - Table CR 2A.
- (3) When the charge fails to be calculated on the basis of the value of securities to be issued as consideration, it shall be computed by reference to the ruling market price of the relevant securities on the JSE Limited on the business day immediately prior to the firm intention announcement of the affected transaction or, as the case may be, by reference to the estimate of the value of any unlisted securities consideration offered. Where the offeree regulated company is unlisted, a further fee of R11 400 will be payable.
- (4) When there are alternative offers, the alternative offer with the highest value will be used to calculate the value of the affected transaction. Comparable offers require all classes of securities to be included in the calculation of the consideration value for fee purposes.
- (5) For hearings or reviews, as the case may be, before the Executive Director or the Takeover Special Committee, the fees shall be at the rate of R3 420 per billable hour, or part thereof;
- (6) To the fees as aforesaid, there may be added the cost of serving any subpoenas, the cost of recording the proceedings, the cost of any expert engaged by the Panel and any other necessary or desirable disbursements incurred in connection with the particular matter. The word "fees" as used in this Chapter and Annexure 2 (Table CR 2A) shall, unless the context indicates otherwise, be deemed to include all such costs.
- (7) Fees shall be paid—
  - (a) in the case of services referred to in Schedule 1.2, by the party requesting the service;
  - (b) in the case of services referred to in Schedule 1.3, by the party requesting the service;
  - (c) in the case of services referred to in Schedule 1.4, by the offeror or offeree regulated company, as the case may be;

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- (d) in the case of services referred to in Schedule 1.5, by the applicant or appellant, but subject to a discretion on the part of the Executive Director or the Takeover Special Committee, as the case may be, to order any other party involved in the hearing or review to pay the fees or to make a contribution in respect thereof;
- (8) The Panel may in its discretion waive or reduce any fees.
- (9) The Panel may require interest at the statutory rate to be added to an offer consideration(s) per security if the offeror has failed to open an offer or make payment in the time detailed in Regulation 103

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Chapter 6 - Business Rescue : Part A – Regulation of Business Rescue Practitioners

Regulation 129-r130

**Chapter 6 - Business Rescue****Part A – Regulation of Business Rescue Practitioners***Authority: s. 138 and s. 223 (1)(d)(ii)***129. Establishment of Business Rescue Practice Regulatory Board**

- (1) The Business Rescue Practice Regulatory Board is hereby established as a juristic person, to function as an organ of state within the public administration, but as an institution outside the public service.
- (2) The Business Rescue Practice Regulatory Board —
  - (a) has jurisdiction throughout the Republic;
  - (b) must be impartial and perform its functions without fear, favour, or prejudice; and
  - (c) must exercise the functions assigned to it in —
    - (i) the most cost-efficient and effective manner; and
    - (ii) in accordance with the values and principles mentioned in section 195 of the Constitution.
- (3) In carrying out its functions, the Business Rescue Practice Regulatory Board may—
  - (a) have regard to international developments in the field of company law; or
  - (b) consult any person, organisation or institution with regard to any matter.

**130. Composition of Board**

- (1) The Business Rescue Practice Regulatory Board comprises -
  - (a) The following persons each of whom will be appointed by the Minister for a term of three years:
    - (i) two persons, to be the Chairperson and Deputy Chairperson of the Board, respectively;
    - (ii) two persons, each of whom is entitled in terms of the Act to practice as, and has experience in the practice of, a business rescue practitioner;
    - (iii) two persons, each of whom has successfully owned or managed a small or medium enterprise for a period of at least five years;
    - (iv) two persons knowledgeable and experienced in company law; and

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Chapter 6 - Business Rescue : Part A – Regulation of Business Rescue Practitioners

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- (v) two persons knowledgeable and experienced in commercial accounting practice; and
- (b) eight other persons, to be designated by the following entities, or their successors:
  - (i) two persons to be designated by the Turnaround Management Association – South Africa, or any successor to it;
  - (ii) two persons to be designated by The Law Society of South Africa;
  - (iii) four persons to be designated one each by -
    - (aa) the Banking Association of South Africa,
    - (bb) Business Unity South Africa;
    - (cc) South Africa Institute of Chartered Accountants; and
    - (dd) South Africa Institute of Professional Accountants
- (2) A person designated in terms of sub-regulation (1)(b) serves until a new person is designated by the relevant entity that made the designation.
- (3) Persons appointed or designated as members of the Board -
  - (a) may be re-appointed upon the expiry of their respective terms of office;
  - (b) must satisfy the requirements of section 205, read with the changes required by the context; and
  - (c) are subject to sections 206 and 207, read with the changes required by the context.
- (4) At any time, the Board may co-opt additional members for a particular purpose and a limited period.
- (5) Persons co-opted in terms of sub-regulation (4) serve until the completion of the purpose for which they were co-opted.
- (6) The deputy chairperson may exercise and perform the powers and duties of the chairperson whenever the chairperson is unable to do so or while the office of chairperson is vacant.

**131. Meetings of the Takeover Regulation Panel**

- (1) The Chairperson of the Board -
  - (a) may determine the date, time and place for meetings of the Board; and

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## Regulation 132

- (b) presides at meetings of the Board, if present.
- (2) In the absence of the Chairperson, and the deputy chairperson, at a meeting of the Board the members present may choose one of their number to preside at the meeting.
- (3) The quorum for a meeting of the Board is a majority of the members.
- (4) The member presiding at a meeting of the Board may determine the procedure at the meeting.
- (5) The decision of a majority of the members of the Board present at any meeting at which there is a quorum is the decision of the Board.
- (6) If there is an equality of votes on any question before a meeting of the Takeover Board –
  - (a) the member presiding at the meeting may cast a deciding vote, if that presiding member did not initially have or cast a vote; or
  - (b) the matter being voted on fails, in any other case.
- (7) Proceedings of the Board are valid despite any vacancy that existed on the Board at the time, or the absence of any member during any part of those proceedings.
- (8) The Board may delegate the exercise of any of its powers or performance of any of its functions to the chairperson, any committee that the Board may establish, or any member of the Board.

**132. Functions of the Business Rescue Practice Regulatory Board**

- (1) The Board is responsible to regulate the practice of persons as business rescue practitioners in terms of Chapter 6 of the Act, by -
  - (a) advising the minister on the qualifications for admission of persons to the practice of business rescue practitioner;
  - (b) accrediting, and suspending or withdrawing the accreditation of, persons who meet the prescribed qualifications for admission to the practice of business rescue practitioner;
  - (c) maintaining a register of accredited business rescue practitioners;
  - (d) establishing standards and codes of good practice for the conduct of business rescue proceedings;
  - (e) receiving and resolving complaints concerning the conduct of business rescue practitioners; and
  - (f) any other functions necessary or ancillary to the functions set out above.

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- (2) The Board may -
- (a) consult with any person with a view to advising on the performance of its functions;
  - (b) issue, amend or withdraw information on current policy in regard to business rescue proceedings generally; and
  - (c) receive and deal with representations relating to any matter with which it may deal in terms of this Chapter; and
  - (d) impose any fee on applications for accreditation, or persons who are accredited as business rescue practitioners, as reasonably necessary to provide adequate resources for the discharge of its functions.
- (3) In exercising its powers and performing its functions the Board must not express any view or opinion on the commercial advantages or disadvantages of any proposed business rescue proceedings.

**133. Qualifications for person to be appointed as practitioner**

- (1) Within two years after the effective date, the Board must recommend to the Minister minimum qualifications for accreditation of persons as business rescue practitioners.
- (2) Until the promulgation, by regulation, of minimum qualifications contemplated in sub-regulation (1), a person may be appointed as the business rescue practitioner of a company if—
  - (a) the company is a state owned or public company, or a company that is required, in terms of Regulation 29 (1) (a) or (b), to have its annual financial statements audited, and the person –
    - (i) is an attorney, who has been admitted to practice as such for at least 10 years, and has engaged predominantly in commercial practice during that time;
    - (ii) is a member in good standing of a professional body that is a member of the International Federation of Accountants, who has been admitted to practice as such for at least 10 years, and has engaged predominantly in commercial practice during that time;
    - (iii) is a practising liquidator, or business turn-around practitioner, registered as such for at least 10 years; or
    - (iv) has a recognised degree in law, commerce or business management, and has at least 10 years experience in conducting business rescue proceedings; or

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- (b) the company is a company not contemplated in paragraph (a), and the person has at least 5 years standing or experience in respect of any of the qualifications set out in that paragraph.
- (3) If a juristic person or partnership is appointed as the business rescue practitioner of a company, auditor, the individual determined by that juristic person or partnership to be responsible for performing the functions of practitioner in terms of Chapter 6 of the Act must satisfy the requirements of this regulation.

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Chapter 6 - Business Rescue : Part B – Regulation of Business Rescue Practices

Regulation 134

**Part B – Regulation of Business Rescue Practices****134. Notices concerning business rescue proceedings***Authority: s. 129 and subsequent*

- (1) Regulation 6 does not apply to the publishing of any notice or information contemplated in this regulation.
- (2) A company that is required to publish a notice in terms of section 129 (3) or (4) or section 131 (8), must –
  - (a) deliver a copy of a Notice of Commencement of Business Rescue Proceedings in Form CoR 134.1 to every affected person;
  - (b) conspicuously post a copy of its Notice of Commencement of Business Rescue Proceedings –
    - (i) at its registered offices, and at its principal places of conducting its business activities;
    - (ii) on its website, if it has one; and
    - (iii) on SENS, if it is a listed company; and
  - (c) place an advertisement, with a copy of its Notice of Commencement of Business Rescue Proceedings, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (3) A company that is required in terms of section 129 (7) to deliver a notice to affected persons, advising that it has not resolved to commence business rescue proceedings, must deliver to each such person a copy of Form CoR 134 (2).
- (4) An applicant in court proceedings, who is required in terms of either section 130 (3)(b) or 131 (2)(b) to notify affected persons that an application has been made to a court, must –
  - (a) deliver a copy of a Notice of Application concerning Business Rescue Proceedings, in form CoR 134.3 to each affected person known to the applicant; and
  - (b) place an advertisement, with a copy of its Notice of Application concerning Business Rescue Proceedings, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (5) A business rescue practitioner –
  - (a) required to notify affected persons –



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Chapter 6 - Business Rescue : Part B – Regulation of Business Rescue Practices

Regulation 134

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- (i) of the prospects for business rescue, as required by section 141 (2)(b); or
- (ii) of the progress of business rescue proceedings, as required by section 132 (3)(b);
- must deliver a copy of a Notice Concerning the Status of Business Rescue Proceedings, in Form CoR 134.4 to each affected person; or
- (b) who has filed –
- (i) a Notice of Termination of Business Rescue Proceedings; or
- (ii) a Notice of Substantial Implementation of a Business Rescue Plan;
- must deliver a copy of the notice to each affected person, and place an advertisement, with a copy of the relevant Notice, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (6) A business rescue practitioner must give any notice to which a person is entitled in terms of section 144 (3), 145 (1)(a), 146 (a) or 151 (2), by –
- (a) serving any such notice as required by section 144(3)(a);
- (b) delivering a copy of any such notice to any affected person entitled to receive it, who has not been served in terms of paragraph (a); and
- (c) conspicuously displaying a copy of the notice -
- (i) at its registered offices, and at its principal places of conducting its business activities;
- (ii) on its website, if it has one; and
- (iii) on SENS, if it is a listed company.
- (7) A business practitioner must publish a proposed business rescue plan, as required by section 150 (5), by -
- (a) delivering a notice of the availability of the plan to every affected person;
- (b) conspicuously displaying a copy of the notice of the availability of the plan -
- (i) at its registered offices, and at its principal places of conducting its business activities;
- (ii) on its website, if it has one; and
- (iii) on SENS, if it is a listed company; and

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- (c) providing without charge a copy of the plan to any affected person who requests such a copy.
  - (8) A person required to file -
    - (a) A company resolution, as required by section 129, must attach to the resolution a Notice of Commencement of Business Rescue Proceedings, in Form CoR 134.1;
    - (b) a Notice of Termination of Business Rescue Proceedings, must do so in Form CoR 134.5; or
    - (c) a Notice of Substantial Implementation of a Business Rescue Plan must do so in Form CoR 134.6.

**135. Tariff of fees for practitioners**

- (1) The basic remuneration of a business rescue practitioner, as contemplated in section 143 (1), to be determined at the time of the appointment of the practitioner by the company, or the court, as the case may be, may not exceed –
  - (a) R 2000 per hour, to a maximum of R 25 000 per day, in the case of a practitioner contemplated in Regulation 133 (2)(a); or
  - (b) R 1250 per hour, to a maximum of R 15 625 per day, in the case of a practitioner contemplated in Regulation 133 (2)(b).
- (2) In addition to the remuneration determined in accordance with section 143 (1) to (4), and this regulation, a practitioner is entitled to be reimbursed for the actual cost of any disbursement made by the practitioner, or expenses incurred by the practitioner to the extent reasonably necessary to carry out the practitioner's functions and facilitate the conduct of the company's business rescue proceedings.

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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part A – Definitions Used in This Chapter

Regulation 136

**Chapter 7 - Complaints, Applications and Tribunal Hearings**

**Part A – Definitions Used in This Chapter**

**136. Definitions**

In this Chapter, unless the context indicates otherwise –

- (a) “Answer” means a document as described in Regulation 148 and filed by a respondent;
- (b) “applicant” means a person who submits an application to the Tribunal in terms of Act or this Chapter;
- (c) “Application” means a request submitted to the Tribunal in terms of the Act or these Regulations;
- (d) “complaint” means -
  - (i) a matter that has been submitted to the Commission in terms of section 168 (1)(b);
  - (ii) a matter initiated by the Commission in terms of section 168 (2); or
  - (iii) a matter that the Minister has directed the Commission to investigate, in terms of section 168 (3).
- (e) “Complaint Referral” means an initiating document as described in Regulation 149 for the purposes contemplated in section 170 (1)(b);
- (f) “Dispute Referral” means an initiating document as described in Regulation 138 for the purposes of referring a dispute for alternative resolution to the Tribunal or an accredited entity, as contemplated in section 166 (1);
- (g) “initiating document”, depending on the context, means either an Application, Complaint Referral, or a Dispute Referral;
- (h) “initiating party”, depending on the context, means -
  - (i) in the case of a Complaint Referral, the Commission, or other person referred to in Regulation 149;
  - (ii) in the case of a Dispute Referral, the person who referred the matter to the Tribunal or accredited entity in terms of section 166 (1), read with Regulation 138;
  - (iii) in any other proceedings, the Applicant;

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- 
- (i) “intervenor” means any person who has been granted standing to participate in particular proceedings before the Tribunal in terms of section 181 (c), read with Regulation 163;
  - (j) “presiding member” means the member designated by the chair to preside over particular proceedings of the Tribunal;
  - (k) “prohibited practice” means either –
    - (i) an action or matter inconsistent with the Act; or
    - (ii) an infringement of a person’s rights in terms of the Act or a company’s Memorandum of Incorporation, or its rules;other than as contemplated in section 168 (1)(a);
  - (l) “Reply” means a document as described in Regulation 152 and filed by a respondent;
  - (m) “respondent”, when used in respect of –
    - (i) an application to review a notice issued by, or a decision of, the Commission, means –
      - (aa) the Commission, and
      - (bb) the person concerned, if that person is not the applicant;
    - (ii) any other application, means the person against whom the relief is sought;
    - (iii) a Complaint Referral, means the person against whom that complaint has been initiated; or
    - (iv) a Dispute Referral, means any party to the dispute other than the initiating party;
  - (n) “sheriff” means a person appointed in terms of section 2 of the Sheriff’s Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively.

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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part B – Alternative Dispute Resolution

Regulation 137-r138

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**Part B – Alternative Dispute Resolution**

**137. Accreditation of alternative dispute resolution providers**

*Authority s. 166(4)(a)(iii) and (5)*

- (1) An application for accreditation as an alternative resolution dispute provider must be made to the Commission in Form CoR 137.1
- (2) A notice accrediting an entity as an alternative dispute resolution provider must be in form CoR 137.2

**138. Alternative dispute resolution procedures**

- (1) A person may refer a matter for alternative dispute resolution to the Tribunal or to an accredited entity, as contemplated in section 166 (1) by filing a completed Form CTR 99.1 with the Tribunal or accredited entity.
- (2) A Certificate of Failed Dispute Resolution, as contemplated in section 166 (2), must be in Form CTR 138.2.
- (3) A consent order, as contemplated in section 167, must be set out in a form satisfactory to the High Court, in terms of its rules.

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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part C – Commission Complaint and Investigation Procedures

Regulation 139-r142

**Part C – Commission Complaint and Investigation Procedures**

**139. Receipt and filing of complaints**

- (1) A complaint to the Commission must be in form 139.1.
- (2) A notice of non-investigation by the Commission must be in Form 139.2.
- (3) A notice of referral by the Commission of a matter to alternative dispute resolution, must be in Form 139.3.

**140. Withdrawal of complaints**

- (1) At any time before the Commission has referred a complaint to the Tribunal, the complainant may withdraw the complaint.
- (2) The Commission may continue to investigate a complaint after it has been withdrawn, as if the Commission had initiated it.

**141. Multiple complaints**

- (1) At any time after a complaint has been initiated by the Commission, or submitted by another person, the Commission may publish a notice disclosing an alleged prohibited practice and inviting any person who believes that the alleged prohibited practice has affected or is affecting a material interest of that person to file a complaint in respect of that matter.
- (2) The Commission may consolidate two or more complaints under a common investigation if they concern the same person as potential respondent.
- (3) If the Commission consolidates two or more complaints as permitted by sub-regulation (2) –
  - (a) Each of those complaints must continue to be separately identified by its own complaint number;
  - (b) Each person who submitted one of those complaints to the Commission remains the complainant with respect to the complaint that they submitted; and
  - (c) After referring one of those consolidated complaints to the Tribunal, or issuing a notice of non-referral in respect of it, the Commission may continue to investigate any of the remaining consolidated complaints.

**142. Consent orders**

- (1) If, at any time before issuing a Notice of Non-referral of a complaint, or referring a complaint to the Tribunal, it appears to the Commission that the respondent may be prepared to agree terms of a proposed order, the Commission –

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Regulation 143

- 
- (a) must notify the complainant, in writing, that a consent order may be recommended to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice –
    - (i) whether the complainant is prepared to accept damages under such an order; and
    - (ii) if so, the amount of damages claimed.
  - (2) If the Commission and the respondent agree the terms of an appropriate order, the Commission must –
    - (a) refer the complaint to the Tribunal in form CoR 142.1;
    - (b) attach to the referral -
      - (i) a draft order in Form CTR 142.2
        - (aa) setting out each section of the Act or of a company's Memorandum of Incorporation or Rules that has been contravened;
        - (bb) setting out the terms agreed between the Commission and the respondent, including, if applicable, the amount of damages agreed between the respondent and the complainant; and
        - (cc) signed by the Commission and the respondent indicating their consent to the draft order; and
      - (ii) a Consent to Order in form CoR 142.3, completed by the complainant, if applicable; and
    - (c) serve a copy of the referral and draft order on the respondent and the complainant.
  - (3) The Commission must not include an order of damages in a draft consent order unless it is supported by a completed Consent to Damages, in form CoR 142.4.
  - (4) A draft consent order may be submitted to the Tribunal in terms of section 173 and this Rule notwithstanding the refusal by a complainant to consent to including an award of damages in that draft order.

**143. Commission investigations**

- (1) A notice to investigate issued by the Commission in terms of section 169 (1)(c) must be in Form 143.1

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Regulation 144-r146

- (2) A summons issued by the Commission in terms of section. 176 (1) must be in Form CoR 143.2.

**144. Request for additional information**

- (1) At any time during an investigation, the Commission may -
  - (a) informally request additional information from a party; and
  - (b) require a party to provide additional information, at any time, by delivering to the party a demand in Form 144.1, setting out the specific information that the Commission requires.
- (2) If, at any time, the Commission has reasonable grounds to believe that a document filed in respect of a investigation contains false or misleading information, the Commission may issue a Demand for Corrected Information in Form 144.2 to the person that filed that document.
- (3) Within 5 business days after being served with a Demand for Corrected Information, the person concerned may appeal to the Tribunal for an order confirming or setting aside the Demand.
- (4) If a person does not appeal a Demand for Corrected Information within the time allowed by sub-regulation (1), or if the Tribunal, on hearing the appeal, confirms the demand in whole or in part the person concerned must file corrected information.
- (5) If the Tribunal, on hearing an application in terms of sub-regulation (2), sets aside the Demand entirely, the Demand is a nullity.

**145. Procedures following investigation**

- (1) A Notice of Non-referral issued by the Commission must be in Form CoR 145.1.
- (2) A Referral of Complaint to the Tribunal in terms of section 170 (1)(b) must be in Form CoR 145.2.

**146. Compliance Notices and certificates**

- (1) A Compliance Notice issued by the Commission in terms of section 171 must be in Form CoR 146.1.
- (2) A Compliance Certificate issued by the Commission must be in Form CoR 146.2.



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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part D – Applications to Tribunal

Regulation 147-r148

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**Part D – Applications to Tribunal**

**147. Initiating applications**

- (1) A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act or these Regulations by completing and filing with the Tribunal's recording officer –
  - (a) an Application in Form CTR 147; and
  - (b) a supporting affidavit setting out the facts on which the application is based.
- (2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it.
- (3) An application in terms of this Regulation must –
  - (a) indicate the basis of the application; or
  - (b) depending on the context –
    - (i) set out the Commission's decision that is being appealed or reviewed;
    - (ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;
    - (iii) set out the regulation in respect of which the applicant seeks condonation;
  - (c) indicate the order sought; and
  - (d) state the name and address of each person in respect of whom an order is sought.

**148. Answering and Replying affidavits**

- (1) Within 10 business days after being served with an application for any relief other than condonation, a respondent against whom an order is sought –
  - (a) may serve an answering affidavit on the applicant, and on any other person against whom the order is sought; and
  - (b) must file the affidavit with proof of service.
- (2) Within 10 business days after being served with an answering affidavit that raises issues not addressed in the application or its supporting affidavit, the applicant may –
  - (a) serve a replying affidavit on the respondent, the Commission and on any other person against whom the order is sought; and

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Regulation 149-r151

- (b) file a copy of the Replying affidavit and proof of service.

**149. Initiating complaint proceedings**

- (1) A Complaint Referral may be filed -
  - (a) by the Commission; or
  - (b) by a complainant in Form CTR 149 within 20 business days after the Commission has issued, or has been deemed to have issued, a Notice of non-referral to that complainant.
- (2) If, in respect of a particular matter, more than one person files a Complaint Referral in terms of sub-regulation (1)(b), the recording officer must combine those referrals under a common case number.
- (3) The person who files a Complaint Referral must serve a copy of it within 3 business days after filing on -
  - (a) The respondent;
  - (b) The Commission, if the Commission did not file the Referral; and
  - (c) On each other person who has previously filed a Complaint Referral in that matter.

**150. Form of Complaint Referral**

- (1) A complaint proceeding may be initiated only by filing a Complaint Referral in the prescribed form
- (2) A Complaint Referral must be supported by an affidavit setting out in numbered paragraphs -
  - (a) a concise statement of the particulars of the complaint; and
  - (b) the points of law, or material facts relevant to the complaint and relied on by the respondent.
- (3) A Complaint Referral may allege alternative prohibited practices based on the same facts.

**151. Answer**

- (1) Within 20 business days after being served with a Complaint Referral filed by the Commission, a respondent who wishes to oppose the Complaint Referral must -
  - (a) serve a copy of their Answer on the Commission; and

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Regulation 152

- (b) file the Answer with proof of service.
- (2) Within 20 business days after being served with a Complaint Referral filed by a person other than the Commission, a respondent who wishes to oppose the Complaint Referral must -
  - (a) serve a copy of their Answer on the Commission, on the person who filed the Referral, and on each other person who has previously filed a Complaint Referral in that matter; and
  - (b) subject to sub-regulation (4), file the Answer with proof of service.
- (3) An Answer that raises only a point of law must set out the question of law to be resolved.
- (4) Any other Answer must be in affidavit form, setting out in numbered paragraphs -
  - (a) a concise statement of the grounds on which the Complaint is opposed;
  - (b) the material facts or points of law on which the respondent relies; and
  - (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.
- (5) An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an Answer will be deemed to have been admitted.
- (6) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

**152. Reply**

- (1) Within 15 business days after being served with an Answer that raises issues not addressed in the Complaint Referral, other than a point of law alone, the person who filed the Complaint Referral may -
  - (a) serve a Reply on the respondent and the Commission, if the Commission did not file the Referral, and on each other person who filed a Complaint Referral in the matter; and
  - (b) file a copy of the Reply and proof of service.
- (2) A Reply must be in affidavit form, setting out in numbered paragraphs -
  - (a) an admission or denial of each new ground or material fact raised in the Answer; and
  - (b) the position of the replying party on any point of law raised in the Answer.

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- (3) If a person who filed a Complaint Referral does not file a Reply, they will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to each of those issues.

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Regulation 153-r156

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**Part E - Tribunal Proceedings**

**153. Amending documents**

- (1) The person who filed a Complaint Referral may apply to the Tribunal by Notice of Motion in form CTR 153 at any time before the end of the hearing of that complaint for an order authorising them to amend their complaint referral as filed.
- (2) If the Tribunal allows the amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Tribunal.

**154. Completion of file**

Subject to any order made by the Tribunal, the filing of documents is complete when a Complaint Referral or Answer has not been responded to within the time allowed.

**155. Late filing, extension and reduction of time**

- (1) A party to any matter may apply to the Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request in form CTR 155.
- (2) Upon receiving a request in terms of sub-regulation (1), the recording officer, after consulting the parties to the matter, must set the matter down for hearing in terms of section 31(5) at the earliest convenient date.

**156. Pre-hearing conferences**

- (1) Before, or within 20 business days after, the filing of documents is completed, a member of the Tribunal assigned by the Chairperson may convene a pre-hearing conference on a date and at a time determined by that member with -
  - (a) the Commission;
  - (b) each complainant who has filed a Complaint Referral;
  - (c) intervenors; and
  - (d) the Respondent.
- (2) If a point of law has been raised, and it appears to the assigned member of the Tribunal at a pre-hearing conference to be practical to resolve that question before proceeding with the Conference, the member may -
  - (a) direct the recording officer to set only that question down for hearing by the Tribunal; and

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## Regulation 157

- (b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal, and the Court, if applicable.
- (3) The assigned member of the Tribunal may adjourn a pre-hearing conference from time to time.
- (4) Pre-hearing conferences may be conducted in person or by telephone or both, need not follow formal Regulations of procedure, and are not open to the public.

**157. Other powers of member at pre-hearing conference**

- (1) At a pre-hearing conference, the assigned member of the Tribunal may -
  - (a) establish procedures for protecting confidential information, including the terms under which participants may have access to that information;
  - (b) direct the Commission to investigate specific issues or obtain certain evidence; or
  - (c) give directions in respect of -
    - (i) technical or formal amendments to correct errors in any documents filed in the matter;
    - (ii) any pending Notices of Motion;
    - (iii) clarifying and simplifying the issues;
    - (iv) obtaining admissions of particular facts or documents;
    - (v) the production and discovery of documents whether formal or informal;
    - (vi) witnesses to be called by the Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;
    - (vii) a timetable for -
      - (aa) the exchange of summaries of expert opinions or other evidence that will be presented at the hearing; and
      - (bb) any other pre-hearing obligations of the parties;
    - (viii) determine the procedure to be followed at the hearing, and its expected duration;
    - (ix) a date, time and schedule for the hearing; or
    - (x) any other matters that may aid in resolving the complaint.

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Regulation 158-r159

- (2) At a pre-hearing conference, the assigned member of the Tribunal may require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its argument, if any, with respect to the complaint, and identifying what it believes are the major unresolved issues.
- (3) After concluding a pre-hearing conference, the assigned member of the Tribunal must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.
- (4) A member of the Tribunal assigned by the Chairperson may schedule a further pre-hearing conference on their own motion, and the provisions of this rule apply to such a conference.

**158. Settlement conference**

At any time before the Tribunal makes a final order in a complaint proceeding, the Tribunal, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach agreement on any outstanding issue.

**159. Initiating consent hearings**

- (1) If a Complaint Referral is to be proceeded with by way of a consent order -
  - (a) Regulations 150 to 158 inclusive, do not apply to the Complaint Referral; and
  - (b) the person filing the Complaint Referral must attach the following documents to it:
    - (i) a Notice of Motion in form CTR 153, for a consent order to be made;
    - (ii) a copy of each consent to order filed with the Commission in respect of the matter, if any; and
    - (iii) a draft order in the terms agreed, signed by the Commission and the respondent indicating their consent to the order.
- (2) At any time before the Tribunal makes a final order in a complaint proceeding, a party may request the Tribunal to make a consent order by filing a Notice of Motion in form CTR 153 with the documents listed in sub-regulation (1)(b).
- (3) A party intending to file a Notice of Motion in terms of sub-regulation (3) -
  - (a) must notify each complainant, in writing, that a consent order may be proposed to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 5 business days after receiving that notice -

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Regulation 160-r161

- (i) whether the complainant is prepared to accept damages under such an order; and
  - (ii) if so, the amount of damages claimed.
- (4) A draft order filed in terms of this Rule must meet the requirements set out in Regulation 160, read with the changes required by context.

**160. Consent hearings**

- (1) Upon receiving a draft consent order, the recording officer must convene a hearing of the Tribunal at the earliest possible date.
- (2) If the Tribunal refuses to make a consent order as requested, or requires any changes that a party is unwilling to accept -
  - (a) The Commission or other complainant, as the case may be, may, as of right, amend the Referral and statement of particulars;
  - (b) The recording officer must serve each party, and complainant, if applicable, with -
    - (i) a notice that the motion for a consent order has been denied; and
    - (ii) a copy of the Complaint Referral and statement of particulars, in their original or amended form, as applicable;
  - (c) the Tribunal must proceed to consider the complaint in accordance with these Regulations as they apply to contested complaints generally, after -
    - (i) the time for an appeal from the decision of the Tribunal in terms of sub-regulation (2) has expired; or
    - (ii) if an appeal has been noted from that decision, after the Court has decided that appeal; and
  - (d) none of the members of the Tribunal who considered the motion for the consent order may participate in any further proceedings relating to that complaint.

**161. Representation of parties**

- (1) A representative acting on behalf of any person in any proceedings must notify the recording officer and every other party, advising them of the following particulars:
  - (a) the representative's name;
  - (b) the postal address and place of employment or business; and
  - (c) if a fax number and telephone number are available, those numbers.



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## Regulation 162

- (2) A person who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the recording officer and every other party of that termination, and of the appointment of another representative, if any, and include that representative's particulars, as set out in subrule (1).
- (3) On receipt of a notice in terms of sub-regulation (1) or (2), the address of the representative or the party, as the case may be, will become the address of record for notices to and for service on that party of all documents in the proceedings.
- (4) Despite sub-regulation (3), a person who, before receiving a notice in terms of sub-regulation (1) or (2), has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Tribunal orders otherwise.
- (5) A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- (6) A notice delivered in terms of sub-regulation (5) must state the names and addresses of each party who is being notified.
- (7) After receiving a notice referred to in sub-regulation (5), the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.

**162. Joinder or substitution of parties**

- (1) The Tribunal, or the assigned member, as the case may be, may combine any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their respective rights to relief depend on the determination of substantially the same question of law or facts.
- (2) If a party to any proceedings has been incorrectly or defectively cited, the Tribunal or the assigned member, as the case may be, on application and on notice to the party concerned, may correct the error or defect and may make an order as to costs.
- (3) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Tribunal or the assigned member, as the case may be, for an order substituting that party for an existing party, and the Tribunal or the assigned member, as the case may be, may make an order, including an order as to costs, or give directions as to the further procedure in the proceedings.
- (4) An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.

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Regulation 163-r164

- (5) No joinder or substitution in terms of this rule will affect any prior steps taken in the proceedings.

**163. Intervenor**

- (1) At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings by filing a Notice of Motion in form CTR 153, which must
- (a) include a concise statement of the nature of the person's interest in the proceedings, and the matters in respect of which the person will make representations; and
  - (b) be served on every other participant in the proceedings.
- (2) No more than 10 business days after receiving a motion to intervene, a member of the Tribunal assigned by the Chairperson must either
- (a) make an order allowing the applicant to intervene, subject to any limitations
    - (i) necessary to ensure that the proceedings will be orderly and expeditious; or
    - (ii) on the matters with respect to which the person may participate, or the form of their participation; or
  - (b) deny the application, if the member concludes that the interests of the person are not within the scope of the Act, or are already represented by another participant in the proceeding.
- (3) Upon making an order in terms of sub-regulation (2), the assigned member may make an appropriate order as to costs.
- (4) If an application to intervene is granted -
- (a) the recording officer must send to the intervenor a list of all documents filed in the proceedings prior to the day on which the request for leave to intervene was granted; and
  - (b) access by an intervenor to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

**164. Summoning witnesses**

- (1) If the Tribunal requires a witness to attend any proceedings to give evidence it may have a summons issued by the recording officer in form CTR 164 for that purpose.
- (2) If a witness is required to produce in evidence any document or thing in the witness's possession, the summons must specify the document or thing to be produced.

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Regulation 165-r167

- (3) After the summons has been issued, it must be served by the sheriff in any manner authorised by Rule 4 of the High Court Regulations.
- (4) A witness who has been required to produce any document or thing at the proceedings must hand it over to the recording officer as soon as possible after service of the summons, unless the witness claims that the document or thing is privileged.

**165. Witness fees**

- (1) A witness in any proceedings is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and published by notice in the Gazette in terms of section 42 of the Supreme Court Act, 1959 (Act 59 of 1959).
- (2) Despite sub-regulation (1), the Tribunal may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

**166. Interpreters and translators**

- (1) Before an interpreter may interpret in Tribunal proceedings, the interpreter must take an oath or make an affirmation in the following form before a member of the Tribunal:

"I,  
.....(full  
name)  
swear/ affirm that whenever I am called on to interpret in any proceedings before the Tribunal, I will correctly interpret to the best of my ability from the language I am called on to interpret into one or her of the official languages, and vice versa."

- (2) An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the High Court Regulations, read with the changes required by context and a printed copy of the oath or affirmation must be signed by the interpreter.
- (3) Any person admitted and enrolled as a sworn translator of any division of the High Court is deemed to be a sworn translator for the Tribunal.

**167. Withdrawals and postponements**

- (1) At any time before the Tribunal has determined a matter, the initiating party may withdraw all or part of the matter by -
  - (a) serving a Notice of Withdrawal in form CTR 167 on each party; and
  - (b) filing the Notice of Withdrawal with proof of service.
- (2) If the parties agree to postpone a hearing, the initiating party must notify the recording officer as soon as possible.

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Regulation 168-r170

- (3) Subject to any provision of the Act to the contrary,
  - (a) a Notice of Withdrawal may include a consent to pay costs; and
  - (b) if no consent to pay costs is contained in a Notice of Withdrawal the other party may apply to the Tribunal by Notice of Motion in form CTR 153 for an appropriate order for costs.

**168. Set down of matters**

- (1) If a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the recording officer for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Chairperson decides otherwise.
- (2) The recording officer must allocate a time, date and place for the hearing and send a Notice of Hearing in form CTR 168 to each party.
- (3) If a matter is postponed to a specific date, the recording officer need not send a Notice of Set Down to the parties.

**169. Matters struck-off**

- (1) The Tribunal member presiding at a hearing may strike a matter off the Roll if the initiating party is not present.
- (2) If a matter is struck off the roll, the matter may not be re-enrolled unless -
  - (a) that party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and
  - (b) a member of the Tribunal assigned by the Chairperson, on considering the explanation offered, orders the matter to be re-enrolled.

**170. Default orders**

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply in accordance with Part 4 – Division E to have the order sought issued against that person by the Tribunal.
- (2) On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order
  - (a) after it has heard any required evidence concerning the motion; and
  - (b) if it is satisfied that the notice or application was adequately served.
- (3) Upon an order being made in terms of sub-regulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party.

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Regulation 171-r173

**171. Conduct of hearings**

- (1) If, in the course of proceedings, a person is uncertain as to the practice and procedure to be followed, the member of the Tribunal presiding over a matter
  - (a) may give directions on how to proceed; and
  - (b) for that purpose, if a question arises as to the practice or procedure to be followed in cases not provided for by these Regulations, the member may have regard to the High Court Regulations.
- (2) Subject to these Regulations, the member of the Tribunal presiding over a matter may determine the time and place for the hearing before the Tribunal.
- (3) The Tribunal may condone any technical irregularities arising in any of its proceedings.

**172. Record of hearing**

The recording officer must compile a record of any proceeding in which a hearing has been held, including

- (a) The initiating document;
- (b) the notice of any hearing;
- (c) any interlocutory orders made by the Tribunal or a member;
- (d) all documentary evidence filed with the Tribunal;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the final decision of the Tribunal and the reasons.

**173. Costs and taxation**

- (1) Upon making an order, the Tribunal may make an order for costs.
- (2) Where the Tribunal has made an award of costs, the following provisions apply:
  - (a) The fees of one representative may be allowed between party and party, unless the Tribunal authorises the fees of additional representatives.
  - (b) The fees of any additional representative authorised in terms of sub-regulation (1) must not exceed one half of those of the first representative, unless the Tribunal directs otherwise.
  - (c) The costs between party and party allowed in terms of an order of the Tribunal, or any agreement between the parties, must be calculated and taxed by the taxing master at the tariff determined by the order or agreement, but if

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no tariff has been determined, the tariff applicable in the High Court will apply.

- (d) Qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the Tribunal during the proceedings.
- (e) The recording officer may perform the functions and duties of a taxing master or appoint any person as taxing master who in the recording officer's opinion is fit to perform the functions and duties signed to or imposed on a taxing master by these Regulations.
- (f) The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the court.
- (g) At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- (h) The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.
- (i) Despite sub-regulation (h), notice need not be given to a party -
  - (i) who failed to appear at the hearing either in person or through a representative; or
  - (ii) who consented in writing to the taxation taking place in that party's absence.
- (j) Any decision by a taxing master is subject to the review of the High Court on application.

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Turnover

Regulation 174-r175

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**Part F – Maximum Administrative Fines and Determination of Turnover**

**174. Maximum administrative fines**

The maximum administrative fine, as contemplated in section 175 (5), is R 1 million.

**175. Manner of calculating turnover**

For all purposes of the Act, the turnover of a company must be calculated in the manner set out in General Notice 253 of 2001 promulgated in terms of section 6 (1) of the Competition Act, 1998.

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Regulation 176

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**Chapter 8 - Regulatory Agencies and Administration**

**Part A – Regulatory Agency Offices and Functions**

**176. Office hours and address of regulatory agencies**

- (1) The responsible officer of a regulatory agency, after consulting the Minister –
  - (a) must publish a notice designating a principal office for that regulatory agency, including in the notice all relevant particulars for public contact with that office; and
  - (b) may at any time publish a notice –
    - (i) designating other offices, and their respective contact particulars; or
    - (ii) change the designated principal office, or any other office, or any relevant contact particulars.
- (2) The offices of a regulatory agency are open to the public every Monday to Friday, excluding public holidays, from 08h30 to 15h30.
- (3) Despite sub-paragraph (2) –
  - (a) in exceptional circumstances a regulatory office may –
    - (i) close to the public if the responsible officer considers it necessary to do so in the interests of safety, security or inability to properly perform its functions; or
    - (ii) accept documents for filing on any day and at any time; and
  - (b) the Commission must accept documents for filing as directed by either the Tribunal or a member of the Tribunal assigned by its chairperson.
- (4) Subject to Regulations 6 and 151, any communication to a regulatory agency, or to a member of the staff of a regulatory agency, may be –
  - (a) Delivered by hand at, or addressed by post to, the regulatory agency's principal office;
  - (b) Communicated by telephone on a number designated in terms of sub-regulation (1);
  - (c) Transmitted by fax on a number designated in terms of sub-regulation (1); or
  - (d) Transmitted by electronic mail to an address designated in terms of sub-regulation (1).



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Regulation 177-r180

**177. Condonation of time limits**

On good cause shown, the responsible officer of a regulatory agency may condone late performance of an act in respect of which these Regulations prescribe a time limit, other than a time limit that is binding on the regulatory agency itself.

**178. Appointment of recording officer and assignment of functions by responsible officer**

The responsible officer of a regulatory agency, in writing -

- (a) must designate at least one member of its staff to serve as the recording officer for that regulatory agency; and
- (b) may assign any function or power of that regulatory agency to a member of its staff, either generally or in connection with a particular matter.

**179. Issuing documents by regulatory agency**

- (1) If the Act or these Regulations require a regulatory agency to issue a document –
  - (a) the document will have been issued by the regulatory agency when it has been signed, and delivered to any person to whom it is addressed; and
  - (b) the document may be signed and delivered at any time of day, despite Regulation 147 (2).
- (2) Regulation 6 (4) does not apply to the delivery of a document issued by a regulatory agency.

**180. Filing documents**

- (1) A regulatory agency -
  - (a) must assign a distinctive number to each initiating document filed with the recording officer of that body;
  - (b) must ensure that every document subsequently filed in respect of a matter is marked with the same distinguishing number;
  - (c) may refuse to accept a document subsequently filed in respect of the same matter that is not properly marked with the assigned distinguishing number;
- (2) Before serving a copy of an initiating document on any person, the initiating party must –
  - (a) obtain a distinguishing number for that document from the recording officer; and
  - (b) note the distinguishing number on every copy of that document.

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Regulation 181-r182

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- (3) A person who files any document with a regulatory agency in terms of the Act or these Regulations must provide to that regulatory agency the person's -
- (a) legal name;
  - (b) address for delivery of documents;
  - (c) telephone number;
  - (d) if available, email address and fax number; and
  - (e) if the person is not an individual, the name of the individual authorised to deal with the regulatory agency on behalf of the person filing the document.

**181. Electronic filing and payments**

- (1) The responsible officer of a regulatory agency, by notice in the Gazette, may direct that any requirement set out in the Act or these Regulations to file a document or communicate with, or make a payment to, that regulatory agency may or must be satisfied in electronic form, subject to any operational requirements published in terms of sub-regulation (2).
- (2) In the responsible officer of a regulatory agency has published a notice contemplated in sub-regulation (1), the recording officer of that regulatory agency must publish operational requirements setting out the processes and procedures to be followed to effect any filing of a document or communication with, or payment to, that regulatory agency, including, but not limited to –
  - (a) Application procedures;
  - (b) Registration procedures;
  - (c) Form and format of records;
  - (d) Manner and form of payment; and
  - (e) Information security requirements;
  - (f) Record retention requirements.
- (3) At any time, a regulatory agency may suspend or terminate any electronic services contemplated in this regulation, without liability for doing so.

**182. Fees**

- (1) A regulatory agency may not charge a fee to any person for filing a complaint in terms of the Act, except with the approval of the Tribunal.
- (2) The fee for filing a document with a regulatory agency, or requesting any action by a regulatory agency, is as set out in Table CR2 A or B.

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- (3) A fee payment will be deemed to be received by a regulatory agency on –
- (a) the date that a cheque or money order in payment of that fee is delivered to the regulatory agency; or
  - (b) the date and at the time that a direct deposit or an electronic transfer of funds in the amount of that fee is credited to the account of the regulatory agency at the financial institution to which it is transferred.

**183. Regulatory agency notices**

- (1) A regulatory agency must publish any notice required or contemplated by the Act or these regulations –
- (a) in the Gazette, if expressly required to do so by the Act or these regulations; or
  - (b) on its website, in any other case.
- (2) Whenever a regulatory agency publishes a notice on its website the agency must –
- (a) also publish an announcement of that notice in the Gazette, setting out the URL for the webpage at which the notice may be viewed in its entirety; and
  - (b) retain that notice on its website and available to the public so long as the information in the notice remains current and valid.
- (3) Whenever a regulatory agency is required, either in terms of the Act or these Regulations, to publish a notice in the Gazette, that notice must contain at least the following information:
- (a) The name of any person directly affected by the notice.
  - (b) The file number assigned by the regulatory agency to the relevant matter.
  - (c) The provision of the Act or Regulations in terms of which the notice is being issued.
  - (d) A brief and concise description of the nature of the relevant matter.
  - (e) If the notice invites submissions, the last date on which submissions may be received.
  - (f) If the notice reports a decision –
    - (i) a brief and concise description of the nature of the relevant decision;
    - (ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and

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- (iii) a statement of any right of review of, or appeal from, that decision, including the period during which a review or appeal may be lodged.
- (g) The name, address and contact numbers of the person in the regulatory agency responsible for publishing the notice.

**184. Financial Administration of the Panel**

- (1) The funding of the Panel, in terms of an Act of Parliament as provided for in Section 120(c) which is enforceable in terms of the Act, being an Act of Parliament itself, will be partially met from a fee equal to a percentage determined from time to time at the discretion of the Panel of -
  - (a) the annual listing fee charged by the JSE Limited to each listed entity in accordance with the JSE Listings Requirements, which shall be levied on 1 March of each year; and
  - (b) the initial listing fee charged in accordance with the JSE Listings Requirements by the JSE Limited to a company which is listed during a year and is not charged the annual listing fee, such fee being due and payable to the Panel at the time of the listing.
- (2) The Panel shall obtain the necessary information for this purpose from the JSE Limited.
- (3) The fees and levies to be paid to the Panel shall be set by the Panel from time to time and published in the *Gazette*.
- (4) The fees and levies in force from time to time shall be disclosed in Annexure 2 – Table CR 2A.
- (5) The Panel shall open and maintain a bank account.
- (6) The Executive Director's remuneration, allowances, benefits, and conditions of appointment shall be determined by the chairperson of the Panel in consultation with the Minister and with the concurrence of the Minister of Finance.
- (7) The chairperson of the Panel, designated in terms of Section 198 of the Act, in consultation with the Minister and with the concurrence of the Minister of Finance, may determine the remuneration, allowances, benefits, and conditions of appointment of each member of the Panel and the Takeover Special Committee, as the case may be.
- (8) In determining such remuneration, allowances, benefits, and conditions of appointment of each member, the chairperson may take into account the remuneration, allowances, benefits, and conditions of appointment of other similar regulatory bodies.
- (9) The financial affairs of the Panel shall be subject to audit and an annual financial report shall be submitted by it to the Minister and published.

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Regulation 185

**185. Form of Annual Report**

- (1) The Annual Report to be submitted by a regulatory agency in terms of the Act must be divided into the following Parts:
  - (a) **Statement of Progress**, being a statement setting out the progress during the preceding year towards realization of the purposes of the Act, to the extent applicable to the particular regulatory agency.
  - (b) **The Proceedings of the Regulatory agency**, being a summary report of the regulatory agency's work in relation to its functions.
  - (c) **The External Relations of the Regulatory agency**, being a summary report on the following matters:
    - (i) The regulatory agency's public awareness programs.
    - (ii) Relationships between the regulatory agency and other regulatory authorities.
    - (iii) Relationships between the regulatory agency and foreign agencies.
    - (iv) Research activities undertaken by the regulatory agency and any proposals for law reform published by the regulatory agency.
  - (d) **The Administrative Activities of the Regulatory agency**, being a summary report concerning the regulatory agency's management, staff, infrastructure, and related matters.
  - (e) **The Regulatory agency's Finances**, including any information required in terms of the Public Finance Management Act.

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Regulation 186

**Part B - Access to Regulatory Agency Information and Records**

**186. Restricted information**

- (1) For the purpose of this Part, the following five classes of information are restricted:
  - (a) Information that has been determined to be confidential information in terms of section 212;
  - (b) Identity of a complainant, in the following circumstances:
    - (i) A person who provides information in terms of section 159 may request that the Commission treat their identity as restricted information; but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.
    - (ii) If a person has requested in terms of sub-paragraph (i) that the Commission treat their identity as restricted information –
      - (aa) The Commission must accept that request; and
      - (bb) That information is restricted unless the person subsequently waives the request in writing.
  - (c) Information that has been received by the Commission in a particular matter, other than that referred to in paragraphs (a) and (b), as follows:
    - (i) The Description of Conduct attached to a complaint, and any other information received by the Commission during its investigation of the complaint, is restricted information until the Commission issues a referral or notice of non-referral in respect of that complaint, but a completed form CoR 139.1 is not restricted information.
  - (d) A document -
    - (i) that contains -
      - (aa) an internal communication between officials of the Commission, or between one or more such officials and their advisors;
      - (bb) an opinion, advice, report or recommendation obtained or prepared by or for the Commission;
      - (cc) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed on the Commission by law; or

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## Regulation 187

- (ii) the disclosure of which could reasonably be expected to frustrate the deliberative process of the Commission by inhibiting the candid -
  - (aa) communication of an opinion, advice, report or recommendation; or
  - (bb) conduct of a consultation, discussion or deliberation; or
- (iii) the disclosure of which could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.
- (e) Any other document to which a public body would be required or entitled to restrict access in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

**187. Access to information**

- (1) Any person, upon payment of the prescribed fee, may inspect or copy any Commission record -
  - (a) if it is not restricted information; or
  - (b) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by
    - (i) this Regulation; or
    - (ii) an order of the Tribunal, or a Court.
- (2) In a particular complaint the Commission may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order, or the consent of a complainant for an order to include an award of damages, to -
  - (a) The respondent; or
  - (b) Any person who has filed form CTR 149 in respect of that complaint.
- (3) In addition to the provisions of sub-regulation (1) and (2), the Commission may release restricted information to, or permit access to it by, only the following persons:
  - (a) the person who provided that information to the Commission;
  - (b) the person to whom the confidential information belongs;
  - (c) a person who requires it for a purpose mentioned in the Act; or

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Regulation 187

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- (d) any other person, with the written consent of the person to whom the information belongs.
- (4) When the Commission submits a Complaint Referral to the Tribunal, or supplies any other information to the Tribunal, or the Minister, the Commission must identify any information included in its submission –
  - (a) in respect of which a claim has been made in terms of Section 212 that has not yet been determined by the Tribunal; or
  - (b) that has been finally determined to be confidential information.



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Regulation 188-r189

**Part B – Exercise of Commission's Exemption and other Functions**

**188. Procedures relating to requests for exemption in terms of Section 9**

- (1) Upon receiving a request for exemption referred by the Minister in terms of section 9, the Commission, by issuing Form CoR 188 to the requester, may require the requester to provide the necessary particulars before the request will be considered, if the application does not specify sufficient particulars of -
  - (a) the specific company or categories of state owned companies for whom the exemption is sought;
  - (b) the specific provisions of the Act from which exemption is sought; or
  - (c) the specific relevant alternative legislation contemplated in section 9(2).
- (2) If the requester-
  - (a) does not respond to the Commission within 40 business days after being served with form ,CoR 188 the request will be deemed to have been abandoned.
  - (b) responds to the Commission, but does not, to the satisfaction of the Commission, meet the requirements set out in form CoR 188 as issued, the Commission, by issuing a new form CoR 188 to the requester, may again stipulate any further information, or clarification, required before the application will be considered, and the provisions of this sub-regulation (2) apply afresh to any such new Form CoR 188.
- (3) If a request is deemed to have been abandoned in terms of sub-regulation (2), the Commission may close its file on that application by giving notice of that fact to the Minister, but without providing any further advice to the Minister as contemplated in section 9 (3).
- (4) After receiving adequate information to begin consideration of a request, the Commission –
  - (a) must publish in the Gazette the notice of the request, and –
  - (b) may request further information from any person who submits a representation in response to a notice published in terms of paragraph (a).

**189. Procedures related to withdrawing exemptions**

- (1) An exemption granted by the Minister in terms of section 9 is valid until withdrawn by the Minister in accordance with this section.
- (2) The Commission -

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- (a) must monitor any national legislation that forms the basis on which an exemption is granted in terms of section 9 (2); and
  - (b) may recommend to the Minister that an exemption be withdrawn if the national legislation contemplated in section 9 (2), and on the basis of which the exemption was granted, has subsequently been amended or repealed to the extent that the grounds for the exemption no longer exist.
- (3) If the Commission is contemplating making a recommendation to the Minister in terms of sub-regulation (2)(b), the Commission must so notify the Minister, the Minister of Public Enterprises, or the Minister responsible for Local Government Affairs, as the case may require, and the company concerned, in writing, of the possible intention to do so, as well as publishing a notice of that intention in the Gazette.
- (4) The Commission may request further information from any person who submits a representation in response to a notice given or published in terms of sub-regulation (3).
- (5) After considering any submissions or other information received in relation to the proposed withdrawal of exemption, the Commission must advise the Minister whether or not to withdraw the exemption.

**190. Content and standards for Commission registers**

- (1) The Commission must keep any register required in terms of the Act in an official language of the Republic, in a manner sufficient to provide an adequate information base to -
- (a) enable the Commission to satisfy all reporting requirements applicable to it, in terms of the Act or any other applicable law;
  - (b) provide simple and efficient access to the public to information required to exercise any right in terms of the Act, or any other applicable law; and
- (2) The registers required to be kept by the Act must be kept in such a manner as -
- (a) to provide adequate precautions against -
    - (i) theft, loss or intentional or accidental damage or destruction; and
    - (ii) falsification; and
  - (b) to facilitate the discovery and correction of any error or falsification.
- (3) If the Commission keeps any register partially or completely in electronic form, the commission must –
- (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and

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Chapter 8 - Regulatory Agencies and Administration : Part B – Exercise of Commission's Exemption and other Functions

Regulation 190

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- (b) ensure that information in the register is capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.
  - (4) The commission may determine the specific form of any register, and the particular manner in which information is recorded in or compiled from any register.

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Chapter 8 - Regulatory Agencies and Administration : Part C – Specialist Committees

Regulation 191

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**Part C – Specialist Committees**

**191. Standing Advisory Committee**

- (1) There is hereby established a specialist committee as contemplated in section 191 (1)(a) to be known as the standing advisory committee on company law, and comprising –
  - (a) a judge, a retired judge or a senior advocate of the Supreme Court of South Africa as chairperson;
  - (b) other members to be determined from time to time determine
- (2) A member of the standing advisory committee shall hold office for such period as the Minister may direct and shall be eligible for reappointment upon the expiration of the period of his office.
- (3) The standing advisory committee shall as to witnesses and their evidence have the powers of a commission duly appointed under the Commissions Act, 1947 (Act 8 of 1947).
- (4) The standing advisory committee may from time to time make recommendations to the Minister in regard to any amendments to this Act which may appear to it to be advisable and shall advise the Minister on any matter referred to it by the Minister.
- (5) The standing advisory committee shall constitute and maintain at all times such standing subcommittees on accounting, legal and other practices as the Minister may from time to time determine.
- (6) The standing advisory committee shall appoint as members of the standing subcommittees such of its members and such other persons and for such periods of office, as it may from time to time determine.
- (7) The standing advisory committee may call to its assistance such person or persons as it may deem necessary to assist it or to investigate matters relating to company law.
- (8) The Registrar shall be responsible for the administration of the standing advisory committee and the standing sub-committees.

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Annexure 1 : Table CR 1 - Prescribed Forms

Regulation 191

**Annexure 1**

**Table CR 1 - Prescribed Forms**  
(in terms of Regulation 5)

Whenever a document is required –

- (a) in terms of a section of the Act or an provision of these Regulations as listed in column 1 of this Table; and
- (b) for a purpose listed in column 2,

the document must be substantially in the form of the annexure listed opposite that section number in column 3, and must be produced, delivered, or filed as the case may be subject to any conditions or requirements listed opposite that section number in column 4.

1 Authority	2 Purpose of Form	3 Form	4 Conditions
S. 11 (1) R. 10	Application to Reserve a Company Name	CoR 10.1	Must be accompanied by a filing fee of R 50; and  Any relevant documentation or evidence required in terms of Regulation 9.
S. 12 (4) R. 10	Application for Extension of Name Reservation	CoR 10.2	Must be accompanied by filing fee of R20; and a statement required by in Regulation 10 (2)(b), and evidence required by Regulation 10 (2)(c), if applicable.
R 10 (3)(a)	Notice requiring further particulars, issued by the Commission	CoR 10.3	
R. 10 (3)(b)	Notice confirming name reservation, issued by the Commission	Cor 10.4	
R. 10 (3)(c)	Notice refusing name reservation, issued by the Commission	CoR 10.5	
S. 12 (3)(a) R. 10 (4)(a)	Notice of potentially contested name, issued by the Commission	CoR 10.6	
S. 12 (3)(b) R. 10 (4)(b)	Notice of potentially offensive name, issued by Commission	CoR 10.7	
S. 12 (9) R 11	Application for Defensive	CoR 11.1	Must be accompanied by a filing fee of R250 and evidence of a direct and

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## Annexure 1 : Table CR 1 - Prescribed Forms

## Regulation 191

1 Authority	2 Purpose of Form	3 Form	4 Conditions
	Name Reservation		material interest in the name.
S. 12 (9) R. 11	Application for Renewal of Defensive Name Reservation	CoR 11.2	Must be accompanied by a filing fee of R50 and evidence of a direct and material interest in the name.
S. 12 (5) R. 12	Application to transfer reserved name	CoR 12.1	Must be accompanied by a filing fee of R250 and evidence as required by Regulation 12 (1)(b).
S. 12 (5) R. 12	Notice of refusal of transfer, issued by the Commission	CoR 12.2	
S. 12 (6) R. 14	Show Cause Notice issued by the Commission related to abuse of name reservation system	CoR 14	
S. 13 (2) R. 15	Notice of Incorporation	CoR 15.1	<p>Payment of a filing fee, subject to a credit –</p> <p>(a) for any amount previously paid to reserve the company's name; or</p> <p>(b) of an amount equal to the fee for name reservation, if the company has chosen to be known by its registration number alone.</p> <p>Must have Memorandum of Incorporation attached.</p> <p>Refer to Annexure 2, Table CR2B for Incorporation fees.</p>
S. 13 (4) R. 15 (5)	Notice rejecting a Notice of Incorporation, issued by the Commission	CoR 15.2	
S. 14 (1)(b) R. 15 (7)	Registration Certificate	CoR 15.3	
S. 13 (1)(a) R. 16 (1)	Standard Form Memorandum of Incorporation	CoR 16.1	Refer to Annexure 2, Table CR2B for Incorporation fees.

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Annexure 1 : Table CR 1 - Prescribed Forms

Regulation 191

1 Authority	2 Purpose of Form	3 Form	4 Conditions
S. 16 (1)(b) R. 16 (2)	Notice of Amendment to the Memorandum of Incorporation	CoR 16.2	Payment of a filing fee, unless it is the first such filing by a pre-existing company, as contemplated in Schedule 5, Item 4 (2). Must be accompanied by either - (a) the Special Resolution of the company setting out the amendment to the Memorandum of Incorporation, or (b) A copy of the complete Memorandum of Incorporation, as amended. Refer to Annexure 2, Table CR2B for Major MOI Amendment fees.
17 (1)(a) R. 16 (3)	Notice of Alteration of Memorandum of Incorporation	CoR 16.3	Payment of filing fee of R100.
s. 17 (4) R. 16 (4)	Notice of Translation of Memorandum of Incorporation	CoR 16.4	Payment of a filing fee of R100. Must be accompanied by a copy of the translated Memorandum of Incorporation, and a sworn statement, as required by section 17 (4).
S. 17 (6) R. 16 (6)	Notice of Consolidated Revision of Memorandum of Incorporation	CoR 16.5	Payment of a filing fee. Refer to Annexure 2, Table CR2B for Major MOI Amendments. Must be accompanied by the consolidated revision of the Memorandum of Incorporation, together with a sworn statement, or a statement of an attorney or notary public, as required by section 17 (6).
S. 17 R. 16 (6)	Notice requiring a company to file a consolidated Memorandum of Incorporation, to be issued by Commission	CoR 16.6	
s.15 (7) R. 16 (11)	Notice of Shareholder Agreement	CoR 16.7	Payment of a filing fee of R100.
15 (3) R. 17	Notice of Adoption of Company Rules	CoR 17.1	Payment of a filing fee of R100.
15 (3)	Notice of Ratification or Non-Ratification of Company Rules	CoR 17.2	Payment of a filing fee of R100.
1 Authority	2 Purpose of Form	3 Form	4 Conditions

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## Annexure 1 : Table CR 1 - Prescribed Forms

## Regulation 191

15 (3)	Notice of Amendment, Alteration or Repeal of Company Rules	CoR 17.3	In the case of an amendment, must be accompanied by either - (a) a copy of the amendment to the Rules; or (b) a copy of the entire company Rules, as amended. Payment of a filing fee of R100.
Schedule 2 R. 19	Notice of Conversion of a close corporation	CoR 19	Must be accompanied by a filing fee, the Memorandum of Incorporation, and the consents required by Regulation 19 (1)(a). Refer to Annexure 2, Table CR2B for fees related to Incorporation.
S. 22 R. 20	Show Cause Notice, to be issued by the Commission concerning reckless or insolvent trading	CoR 20.1	
S. 22 R. 20	Notice accepting information	CoR 20.2	
S. 22 R. 21	Notice that company liabilities exceed assets	CoR 21.1	
S. 22 R. 21	Quarterly renewal of Notice concerning assets and liabilities	CoR 21.2	
S.23 (3) R. 22	Notice of Registration of External Company	CoR 22.1	Payment of filing fee. Must be accompanied by a copy of the certificate of registration or comparable document issued by the jurisdiction within which the company was incorporated, and other items required by Regulation 22. Refer to Annexure 2, Table CR2B for fees related to Incorporation.
S. 23 R. 22	Certificate of Registration of External Company	CoR 22.2	Refer to Annexure 2, Table CR2B for fees related to Incorporation.
S. 23 (3)(ii) R. 23	Notice of change of Registered Office	CoR 23	Payment of a filing fee of R100.
S. 25 R. 24	Notice of Location of Company records	CoR 24	To be filed only if company records are not kept at its registered office.
S. 26 R. 26	Request for Access to information	CoR 26	
S. 27(4) R. 27	Notice of Change of Financial year end	CoR 27	Payment of a filing fee of R100.
S. 33 R. 32	Annual return	CoR 32.1	Refer to Annexure 2, Table CR2B for fees related to Annual Returns.
S. 33 R. 32 (4)	Financial Accountability Supplement to Annual Return	CoR 32.2	To be filed only by companies exempt from audit or independent review of their annual financial statements



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Annexure 1 : Table CR 1 - Prescribed Forms

Regulation 191

1 Authority	2 Purpose of Form	3 Form	4 Conditions
S. 33 R. 32 (4)	Financial Accountability Supplement to Annual Return	CoR 32.3	To be filed only by non profit companies required to have their annual financial statements independently compiled
S. 33 R. 32 (4)	Financial Accountability Supplement to Annual Return	CoR 32.4	To be filed only by companies required to have their annual financial statements independently reviewed
S. 33 R. 32 (7)	Annual return for External companies	CoR 32.5	Refer to Annexure 2, Table CR2B for fees related to Annual Returns
Schedule 5 Item 6 R. 35	Notice of Board Resolution to convert par value shares	CoR 35	No fee to be charged for this transitional measure.
S. 21 R. 41	Notice of Decision relating to a Pre-Incorporation contract	CoR 41	
Various sections R 42	Standard form notice to companies by holders of securities	CoR 42.1	Not to be filed with commission
Various section R. 42	Standard form of notice by company to holders of its securities	CoR 42.2	Not to be filed with commission
S. 75 R. 42	Standard form notice to company by director of personal financial interest	CoR 42.3	Not to be filed with commission
R 43 (4)	Demand for Proxy Appointment	CoR 43	
s. 116 R. 45	Notice of Amalgamation or Merger	CoR 45	Payment of filing fee Refer to Annexure 2 Table CR 2A
S. 70 (6) R. 46	Notice of Change concerning a Director	CoR 46	Payment of a filing fee of R100.
S. 80 to 82 R. 47	Notice of resolution to wind up solvent company	CoR 47.1	Payment of filing fee of R100.
S. 80 to 82 R. 47	Demand Letter by Commission to inactive company	CoR 47.2	
S. 80 to 82 R. 47	Commission Notice of Pending De-registration	CoR 47.3	
S. 80 to 82 R. 47	Application for re- instatement of de- registered company	CoR 47.4	Refer to Annexure 2, Table CR2B for fees related to Incorporation.
S. 84 (6), R. 50(12) R. 51	Commission Notice to Company to make required appointment	CoR 51.1	
S. 84 (6), R. 50(12) R. 51	Company Notice of required appointment	CoR 51.2	

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## Annexure 1 : Table CR 1 - Prescribed Forms

## Regulation 191

1 Authority	2 Purpose of Form	3 Form	4 Conditions
s. 97 (2) R. 53	Documents required in relation to Employee Share Schemes	CoR 53.1	
s. 97 (2) R. 53	Annual certificate required relating to Employee Shares Schemes	CoR 53.2	
s. 99 (7) R. 53	Application to Commission to exclude categories of persons from rights offer	CoR 53.3	
s. 99 R. 53	Registration of Prospectus by Commission	CoR 53.4	Refer to Annexure 2, Table CR2B for fees related to Prospectus.
s. 99 R. 53	Application to Commission to permit information to be excluded from prospectus	CoR 53.5	Refer to Annexure 2, Table CR2B for fees related to Prospectus.
S.116 (3) R 92	Notice of Amalgamation or Merger	CoR 92	Refer to Annexure 2, Table CR2B for filing fees
S. 129, 131 R.134	Notice of Commencement of Business Rescue Proceedings	CoR 134.1	
S. 129 (7) R. 134 (3)	Notice to not commence business rescue proceedings	CoR 134.2	
S 130, 131 R. 134 (4)	Notice of court application in business rescue proceedings	CoR 134.3	
s. 132, 141 R. 134 (5)	Notice concerning status of Business Rescue Proceedings	CoR 134.4	
134	Notice of Termination of Business Rescue Proceedings	CoR 134.5	
R 134	Notice of Substantial Implementation of a Business Rescue Plan	CoR 134.6	
s. 166 R 137	Application to Commission to be accredited as ADR provider	CoR 137.1	Payment of application fee of R500.

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Annexure 1 : Table CR 1 - Prescribed Forms

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1 Authority	2 Purpose of Form	3 Form	4 Conditions
s. 166 R 137	Commission certificate of accredited ADR provider	CoR 137.2	
S 166 R 138	Application for ADR	CTR 138.1	
s. 166 R 138	Certificate of Failed ADR	CTR 138.2	
s. 168 R. 139	Complaint to Commission	CoR 139.1	
s. 169 R. 139	Commission Notice of Non-investigation	CoR 139.2	
s. 169 R. 139	Commission Referral to Alternative Dispute resolution	CoR 139.3	
R 142	Consent Referral	CTR 142.1	
R 142	Consent Order	CoR 142.2	
R. 142	Consent to Order	CoR 142.3	
R. 142	Consent to Damages	CoR 142.4	
R 143	Commission Notice to Investigate	CoR 143.1	
R 143	Commission Summons	CoR 143.2	
R 144	Commission request for additional information	CoR 144.1	
R 144	Commission Demand for corrected information	CoR 144.2	
R 145	Commission Notice of Non referral	CoR 145.1	
R 145	Commission referral to Tribunal	CoR 145.2	
R 146	Compliance Notice	CoR 146.1	
R 146	Compliance Certificate	CoR 146.2	
R 147	Application to Tribunal	CTR 147	
R 149	Referral by complainant to Tribunal	CTR 149	
R 153	Notice of Motion	CTR 153	
R 155	Request for Condonation	CTR 155	

1 Authority	2 Purpose of Form	3 Form	4 Conditions
R 164	Tribunal Summons	CTR 164	
R 167	Notice of Withdrawal	CTR 167	

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Annexure 1 : Table CR 1 - Prescribed Forms

Regulation 191

R 168	Tribunal Notice of Hearing	CTR 168	
s. 9 R 188	Request for particulars regarding requested exemption	CoR 188	

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Annexure 2 : Table CR 2A – Panel Fee Schedule

Regulation 191

**Annexure 2**

**Table CR 2A – Panel Fee Schedule**  
(in terms of Regulation 155)

The fees chargeable (inclusive of Value Added Tax) for the several categories of service rendered by the Panel, and referred to in Regulation ##:

- (c) no fees will be charged for services under Schedule 1.1;
- (d) the fees for services under Schedule 1.2 shall be at the rate of R1 710 per billable hour of work or part thereof;
- (e) the fees for services under Schedule 1.3 shall be at the rate of R3 420 per billable hour of work or part thereof;
- (f) the fees for services under Schedule 1.4, including a circular dealing with a waiver, payable upon first submission of documentation for which a VAT invoice will be issued by the Panel, shall depend upon the value of the offer, being the consideration payable for acquiring, merging or amalgamating the securities or assets/undertaking of each/all offeree regulated company/ies involved, according to the scale set out below:

Consideration value of affected transaction (R million)	Fee including VAT (R)
Up to 50	57 000
Over 50 to 100	85 500
Over 100 to 250	114 000
Over 250 to 500	142 500
Over 500 to 1 000	171 000
Over 1 000 to 10 000	228 000
Over 10 000	285 000

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Annexure 2 : Table CR 2B – Commission Fee Schedule

Regulation 191

**Table CR 2B – Commission Fee Schedule**

*(in terms of Regulation 155)*

Activity	Proposed Fees
<b>Name Reservation</b>	
1) Application for name reservation	
Manual Lodgement	50
Electronic Lodgement	30
2) Application for extension of name reservation	
Manual Lodgement	20
Electronic Lodgement	n/a
3) Application for transfer of name reservation (new process)	
Manual Lodgement	250
Electronic Lodgement	200
4) Application reservation of defensive name	
Manual Lodgement	250
Electronic Lodgement	200
5) Application for renewal of registration of defensive name	50
<b>Incorporation</b>	
1) Registration of Memorandum of Incorporation	
a) Company adopting mandatory MOI clauses	100
b) Company adopting mandatory and optional MOI clauses	350
2) Conversion of CC to Company	
a) Company adopting mandatory MOI clauses	100
b) Company adopting mandatory and optional MOI clauses	350
<b>Amendments and Alterations (MOI)</b>	
1) Major MOI Amendments	
	50
a) Draft Amendment	30
b) Final Amendment	0
2) Minor MOI Amendments	100
<b>Prospectus</b>	
1) Draft Prospectus	
2) Final Prospectus	
	R5,000 daily rate or part thereof

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## Annexure 2 : Table CR 2B – Commission Fee Schedule

Regulation 191

Activity	Proposed Fees
<b>Deregistration</b>	
Application to deregister a Company	100
<b>Restoration</b>	
Application to restore a company	
1) Registration of Memorandum of Incorporation	
a) Company adopting mandatory MOI clauses	100
b) Company adopting mandatory and optional MOI clauses	350
<b>Annual Return</b>	
<b>1) Turnover less than R10M</b>	
Lodgement within 30 days after anniversary of incorporation	450
Lodgement after 60 days of anniversary of incorporation	600
<b>2) Turnover greater than R10M and less than R50M</b>	
Lodgement within 30 days after anniversary of incorporation	2,000
Lodgement after 30 days of anniversary of incorporation	2,500
<b>3) Turnover greater than R50M</b>	
Lodgement within 30 days after anniversary of incorporation	3,000
Lodgement after 30 days of anniversary of incorporation	4,000

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Annexure 3 : Table CR 3 – Methods and Times for Delivery of Documents

Regulation 191

**Annexure 3**

**Table CR 3 – Methods and Times for Delivery of Documents**

*(in terms of Regulation 8)*

A notice or document to be delivered for any purpose contemplated in the Act or these Regulations may be delivered in any manner set out in this Table.

Subject to Regulation 7 (4), a document delivered by a method listed in the second column of this Table will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table.

Nature of Person to whom the document is to be delivered	Method of Delivery	Date and Time of Deemed delivery
<b>ANY PERSON</b>	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the person's last-known address; or	On the 7th day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that person in terms of the following rows of this Table.	As provided for that method of delivery.



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Annexure 3 : Table CR 3 – Methods and Times for Delivery of Documents

Regulation 191

Nature of Person to whom the document is to be delivered	Method of Delivery	Date and Time of Deemed delivery
<b>ANY NATURAL PERSON</b>	<p>By handing the notice or a certified copy of the document to the person, or to any representative authorised in writing to accept service on behalf of the person; or</p> <p>By leaving the notice or a certified copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time; or</p> <p>By leaving the notice or a certified copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
<b>THE TRIBUNAL</b>	<p>By entering the required information in an electronic representation of that form on the Internet Web site, if any, maintained by the Tribunal, if the document is a prescribed form; or</p> <p>By transmitting the document as a separate file attached to an electronic mail message addressed to the recording officer of the Tribunal; or</p> <p>By sending a computer disk containing the document in electronic form, by registered post addressed to the recording officer of the Tribunal; or</p> <p>By handing the document, or a computer disk containing the document in electronic form, to the recording officer of the Tribunal.</p>	<p>On the date and at the time recorded by the Tribunal's computer system, as verified by fax reply to the sender of the information.</p> <p>On the date and at the time recorded by the Tribunal's computer system, unless, within 1 business day after that date, the recording officer advises the sender that the file is unreadable.</p> <p>On the date and at the time of delivery of the registered post to the recording officer of the Tribunal, as recorded by the post office, unless, within business day after that date, the recording officer advises the sender that the disk is unreadable.</p> <p>On the date and at the time noted in a receipt issued by the recording officer of the Tribunal unless, the document is on a computer disk, and, within 1 business day after that date, the recording officer advises the sender that the disk is unreadable.</p>

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Annexure 3 : Table CR 3 – Methods and Times for Delivery of Documents

Regulation 191

Nature of Person to whom the document is to be delivered	Method of Delivery	Date and Time of Deemed delivery
<b>THE COMMISSION</b>	<p>By entering the required information in an electronic representation of that form on the Internet Web site, if any, maintained by the Commission, if the document is a prescribed form; or</p> <p>By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or</p> <p>By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or</p> <p>By handing the document, or a computer disk containing the document in electronic form, to the Commission, or a responsible employee who is apparently in charge of the Commission's office.</p>	<p>On the date and at the time recorded by the Commission's computer system, as verified by fax reply to the sender of the information.</p> <p>On the date and at the time recorded by the Commission's computer system, unless, within 1 business day after that date, the Commission advises the sender that the file is unreadable.</p> <p>On the date and at the time of delivery of the registered post to the Commission, as recorded by the post office, unless, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.</p> <p>On the date and at the time noted in a receipt issued by the Commission unless, the document is on a computer disk, and, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.</p>
<b>A COMPANY OR SIMILAR BODY CORPORATE</b>	<p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic; or</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
<b>THE STATE OR A PROVINCE</b>	By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.	On the date and at the time recorded on a receipt for the delivery.
<b>A MUNICIPALITY</b>	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any person acting on behalf of that person.	On the date and at the time recorded on a receipt for the delivery.

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## Annexure 3 : Table CR 3 – Methods and Times for Delivery of Documents

## Regulation 191

Nature of Person to whom the document is to be delivered	Method of Delivery	Date and Time of Deemed delivery
<b>A TRADE UNION</b>	<p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees in terms of these Regulations, at that office.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p>
<b>EMPLOYEES OF FIRM</b>	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
<b>A PARTNERSHIP, FIRM OR ASSOCIATION</b>	<p>By handing the notice or a certified copy of the document to a person who is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of the partnership, firm or association; or</p> <p>If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>
<b>A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL</b>	By handing the notice or a certified copy of the document to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body.	On the date and at the time recorded on a receipt for the delivery.

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Annexure 4 : Prescribed Forms

Regulation 191

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**Annexure 4****Prescribed Forms**

**Note: Only the following forms are being published for comment.**

**Form CoR 16.1(A) – Short Standard Form Memorandum of Incorporation for a private company**

*This form is to be used for a private company that accepts all the default provisions of the Act without limitation, extension or variation.*

**Form CoR 16.1(B) – Long Standard Form Memorandum of Incorporation for any profit company**

*This form is to be used for any profit company that wishes to limit, extend or vary the effect of any alterable provisions of the Act.*

**Form CoR 16.1(C) – Short Standard Form Memorandum of Incorporation for a non-profit company without members**

*This form is to be used for a non profit company that will have no members, and accepts all the default provisions of the Act without limitation, extension or variation.*

**Form CoR 16.1(D) – Long Standard Form Memorandum of Incorporation for a non-profit company without members**

*This form is to be used for any non-profit company that will have no members, but wishes to limit, extend or vary the effect of any alterable provisions of the Act.*

**Form CoR 16.1(E) – Long Standard Form Memorandum of Incorporation for a non-profit company with members**

*This form is to be used for any non profit company that will have members, and wishes to limit, extend or vary the effect of any alterable provisions of the Act.*

**All other forms will be added when the regulations are finally promulgated.**

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**Form CoR 16.1(A)**

**Short Standard Form Memorandum of Incorporation for a Private Company**

**Republic of South Africa  
Companies Act, 2008**

**Memorandum of Incorporation  
of**

[Name of Company]

which is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number of Incorporator	Signature	Date

[Use additional pages if necessary]

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## **Article 1 - Incorporation and Nature of the Company**

### **1.1 Incorporation**

- (1) The Company is incorporated as from \_\_\_\_\_ as a private company, as defined in the Companies Act, 2008..
- (2) The Company is incorporated in accordance with, and governed by –
  - (a) the provisions of the Companies Act, 2008 without any limitation, extension, variation or substitution permitted by the Act; and
  - (b) the provisions of this Memorandum of Incorporation.

### **1.2 Powers of the Company**

- (1) The Company is not subject to any provision contemplated in section 15 (2)(b) or (c).
- (2) The purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19 (1)(b)(ii).

### **1.3 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b).
- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- (3) The Company must publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each shareholder by ordinary mail.
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) by delivering a copy of those rules to each shareholder by ordinary mail.

### **1.4 Optional provisions of Companies Act, 2008 do not apply**

- (1) The Company does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.-
- (2) The Company does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations provided for in that Act.

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## **Article 2 - Securities of the Company**

### **2.1 Securities**

- (1) The Company is authorised to issue no more than \_\_\_\_\_ shares of a single class of common shares, each of which entitles the holder to –
  - (a) vote on any matter to be decided by a vote of shareholders of the company;
  - (b) participate in any distribution of profit to the shareholders; and
  - (c) participate in the distribution of the residual value of the company upon its dissolution.
- (2) The pre-emptive right of the Company's shareholders to be offered and to subscribe additional shares, as set out in section 39 is unconditional, and is not limited, negated or restricted in any manner contemplated in subsection (2) of section 39.
- (3) The authority of the Company's Board of Directors to –
  - (a) authorise the Company to provide financial assistance to any person in relation to the subscription of any option or securities of the Company or a related or inter-related company, as set out in section 44;
  - (b) approve the issuing of any authorised shares of the Company as capitalisation shares, as set out in section 47 (1);
  - (c) resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47 (1),
  - (d) authorise the company to issue secured or unsecured debt instruments, as set out in section 43 (2); or
  - (e) to grant special privileges associated with any debt instruments to be issued by the company, as set out in section 43 (3),is not limited or restricted by this Memorandum of Incorporation.

### **2.2 Registration of beneficial interests**

The authority of the Company's Board of Directors to allow the Company's issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person, as set out in section 56 (1) is not limited or restricted by this Memorandum of Incorporation.

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## **Article 3 – Shareholders and Meetings**

### **3.1 Shareholders' right to Information**

Every shareholder of the company has the rights to access information set out in section 26 (2).

### **3.2 Shareholders' authority to act**

If, at any time, every shareholder of the Company is also a director of the Company, as contemplated in section 57 (4), the authority of the shareholders to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

### **3.3 Shareholder representation by proxies**

- (1) The right of a shareholder of the Company to appoint 2 or more persons concurrently as proxies, as set out in section 58 (3)(a) is not limited, restricted or varied by this Memorandum of Incorporation.
- (2) The authority of a shareholder's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) is not limited or restricted by this Memorandum of Incorporation.
- (3) The requirement that a shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the shareholder's rights at a shareholders meeting, as set out in section 58 (3)(c) is not varied by this Memorandum of Incorporation.
- (4) The authority of a shareholder's proxy to decide without direction from the shareholder whether to exercise, or abstain from exercising, any voting right of the shareholder, as set out in section 58 (7) is not limited or restricted by this Memorandum of Incorporation.

### **3.4 Record date for exercise of shareholder rights**

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59 (3).

### **3.5 Shareholders meetings**

- (1) The Company is not required to hold any shareholders meetings other than those specifically required by the Companies Act, 2008.-
- (2) The right of shareholders to requisition a meeting, as set out in section 61 (3), may be exercised by the holders of at least 25% of the voting rights entitled to be



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exercised in relation to the matter to be considered at the meeting.

- (3) The authority of the Company's Board of Directors to determine the location of any shareholders meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.
- (4) The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders, is as provided for in section 62 (1).
- (5) The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.
- (6) The quorum requirement for a shareholders meeting to begin, or for a matter to be considered are as set out in section 64 (1) without variation.
- (7) The time periods allowed in section 64 (4) and (5) apply to the Company without variation.
- (8) The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation.
- (9) The maximum period allowable for an adjournment of a shareholders meeting is as set out in section 64 (13), without variation.

### 3.5 Shareholders resolutions

- (1) For an ordinary resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least 50% of the voting rights exercised on the resolution, as provided in section 65 (7).
- (2) For a special resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65 (7).
- (3) A special resolution adopted at a shareholders meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11).

## Article 4 - Directors and Officers

### 4.1 Composition of the Board of Directors

- (1) The Board of Directors of the Company comprises of \_\_\_\_\_ directors, and \_\_\_\_\_ alternate directors, to be elected by the shareholders as contemplated in section 68.
- (2) The manner of electing directors of the Company is as set out in section 68 (2), and

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each elected director of the Company serves for an indefinite term, as contemplated in section 68 (1).

**4.2 Authority of the Board of Directors**

- (1) The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one director, as contemplated in section 57 (3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

**4.3 Directors' Meetings and Committees**

- (1) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the directors.
- (2) The authority of the Company's Board of Directors to –
  - (a) conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3); or
  - (b) determine the manner and form of providing notice of its meetings, as set out in section 73 (4); or
  - (c) proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5), or
  - (d) to consider a matter other than at a meeting, as set out in section 74.is not limited or restricted by this Memorandum of Incorporation.

**4.4 Directors compensation and financial assistance**

The authority of the Company to –

- (a) pay remuneration to the Company's directors, in accordance with a special resolution approved by the Company's shareholders within the previous two years, as set out in section 66 (9) and (10);
- (b) advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3);
- (c) to indemnify a director in respect of liability, as set out in section 78 (5); or
- (d) purchase insurance to protect the Company, or a director, as set out in section 78 (6)

is not limited or restricted by this Memorandum of Incorporation.

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**Form CoR 16.1(B)****Long Standard Form Memorandum of Incorporation for a Profit Company****R e p u b l i c o f S o u t h A f r i c a**  
**C o m p a n i e s A c t , 2 0 0 8****Memorandum of Incorporation**  
**of**

[Name of Company]

which is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

The Schedules attached to this Memorandum of Incorporation are a part of this Memorandum of Incorporation.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number of Incorporator	Signature	Date

*[Use additional pages if necessary]*

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**Article 1 - Incorporation and Nature of the Company**

**1.1 Incorporation**

- (1) The Company is incorporated as from \_\_\_\_\_ as a  
\_\_\_\_\_ private company,  
\_\_\_\_\_ personal liability company,  
\_\_\_\_\_ public company,  
as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with and governed by -
- (a) the unalterable provisions of the Companies Act, 2008; and
  - (b) the alterable provisions of the Companies Act, 2008, subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and
  - (c) the provisions of this Memorandum of Incorporation.

**1.2 Powers of the Company**

- (1) The Company -  
\_\_\_\_\_ is not subject to any provisions contemplated in section 15 (2)(b) or (c).  
\_\_\_\_\_ is subject to provisions contemplated in section 15 (2)(b) or (c), as set out in Part A of Schedule 1.
- (2) The purposes and powers of the Company -  
\_\_\_\_\_ are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii).  
\_\_\_\_\_ are subject to the restrictions, limitations or qualifications contemplated in section 19 (1)(b)(ii), as set out in Part A of Schedule 1.

**1.3 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company -  
\_\_\_\_\_ may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b).  
\_\_\_\_\_ may be altered or amended in the manner set out in section 16, 17 or 152 (6)(b), subject to the provisions contemplated in section 16 (1)(c), as set out in Part B of Schedule 1.
- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) -  
\_\_\_\_\_ is not limited or restricted in any manner by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 1.

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- 
- (3) The Company must publish any rules made in terms of section 15 (3) to (5) -  
\_\_\_\_\_ by delivering a copy of those rules to each shareholder by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part B of Schedule 1.
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) -  
\_\_\_\_\_ by delivering a copy of those rules to each shareholder by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part B of Schedule 1.

**1.4 Application of optional provisions of Companies Act, 2008**

*[This sub-article is not to be used in the case of a public company]*

- (1) The Company -  
\_\_\_\_\_ does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.  
\_\_\_\_\_ does elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008, to the extent set out in Part C of Schedule 1.
- (2) The Company -  
\_\_\_\_\_ being a private company, does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations provided for in that Act.  
\_\_\_\_\_ being a private company, elects in terms of section 118 (1)(c)(ii) to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations in terms of that Act, to the extent set out in Part C of Schedule 1.

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**Article 2 - Securities of the Company****2.1 Shares**

- (1) The Company is authorised to issue no more than -  
\_\_\_\_\_ shares of a single class of common shares, each of which entitles the holder to –  
(a) vote on any matter to be decided by a vote of shareholders of the company;  
(b) participate in any distribution of profit to the shareholders; and  
(c) participate in the distribution of the residual value of the company upon its dissolution.  
\_\_\_\_\_ the maximum number of each of the classes of shares set out in Part A of Schedule 2, subject to the preferences, rights, limitations and other terms associated with each such class, as set out in Part A of Schedule 2.
- (2) The authority of the Company's Board of Directors to increase or decrease the number of authorised shares of any class of the Company's shares, to reclassify any shares that have been authorised but not issued, to classify any unclassified shares, or to determine the preferences, rights, limitations or other terms of any class of shares, as set out in section 36 (2) and (3)(a) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part A of Schedule 2.
- [In the case of a public company]*
- (3) The shareholders of the Company –  
\_\_\_\_\_ do not have any pre-emptive right to be offered and to subscribe additional shares of the company.  
\_\_\_\_\_ have a common pre-emptive right to be offered and to subscribe additional shares of the company, as set out in Part A of Schedule 3.  
\_\_\_\_\_ have only such pre-emptive rights to be offered and to subscribe additional shares of the company, if any, as are set out in the preferences, rights, limitations and other terms associated with their respective classes of shares.
- [In the case of a private or personal liability company]*
- (3) The pre-emptive right of the Company's shareholders to be offered and to subscribe additional shares, as set out in section 39 -  
\_\_\_\_\_ is unconditional, and is not limited, negated or restricted in any manner contemplated in subsection (2) of section 39.

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\_\_\_\_\_ is subject to the conditions, limitations, or restrictions set out in Part A of Schedule 3.

\_\_\_\_\_ does not apply with respect to any shares of the Company.

- (4) The authority of the Company's Board of Directors to authorise the Company to provide financial assistance in relation to the subscription of any option or securities of the Company or a related or inter-related company, as set out in section 44 -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 2.

- (5) The authority of the Company's Board of Directors to approve the issuing of any authorised shares of the Company as capitalisation shares, to issue shares of one class as capitalisation shares in respect of shares of another class, and to resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47 (1) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 2.

- (6) Shares of the Company are to be issued –

\_\_\_\_\_ in uncertificated form, as contemplated in section 49 (2)(b).

\_\_\_\_\_ in either certificated or uncertificated form, as the Board may determine.

## 2.2 Debt instruments

- (1) The authority of the Company's Board of Directors to authorise the company to issue secured or unsecured debt instruments, as set out in section 43 (2) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 2.

- (1) The authority of the Company's Board of Directors to grant special privileges associated with any debt instruments to be issued by the company, as set out in section 43 (3) –

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 2.

## 2.3 Registration of beneficial interests

The authority of the Company's Board of Directors to allow the Company's issued securities to be held by, and registered in the name of, one person for the beneficial interest of another person, as set out in section 56 (1) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

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\_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 2.



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**Article 3 - Shareholders****3.1 Shareholders' right to information**

In addition to the rights to access information set out in section 26 (2), a shareholder of the Company has the further rights to information, if any, set out in Part A of Schedule 2 of this Memorandum of Incorporation, as being rights associated with the shares held by that shareholder.

**3.2 Shareholders' authority to act**

If, at any time, every shareholder of the Company is also a director of the Company, as contemplated in section 57 (4), the authority of the shareholders to act without notice or compliance with any other internal formalities, as set out in that section -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part A of Schedule 3.

**3.3 Representation by concurrent proxies**

The right of a shareholder of the Company to appoint 2 or more persons concurrently as proxies, as set out in section 58 (3)(a) -

\_\_\_\_\_ is not limited, restricted or varied by this Memorandum of Incorporation.

\_\_\_\_\_ is limited, restricted or varied to the extent set out in Part B of Schedule 3.

**3.4 Authority of proxy to delegate**

The authority of a shareholder's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 3.

**3.5 Requirement to deliver proxy instrument to the Company**

The requirement that a shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the shareholder's rights at a shareholders meeting, as set out in section 58 (3)(c) -

\_\_\_\_\_ is not varied by this Memorandum of Incorporation.

\_\_\_\_\_ is varied to the extent set out in Part B of Schedule 3.

**3.6 Deliberative authority of proxy**

The authority of a shareholder's proxy to decide without direction from the shareholder

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whether to exercise, or abstain from exercising any voting right of the shareholder, as set out in section 58 (7) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 3.

**3.7 Record date for exercise of shareholder rights**

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is -

\_\_\_\_\_ as determined in accordance with section 59 (3).

\_\_\_\_\_ as determined in the manner set out in Part C of Schedule 3.

**Article 4 - Shareholders Meetings**

**4.1 Requirement to hold meetings**

The Company -

\_\_\_\_\_ is not required to hold any shareholders meetings other than those specifically required by the Companies Act, 2008.

\_\_\_\_\_ is required to hold shareholders meetings, in addition to those specifically required by the Companies Act, 2008, as set out in Part A of Schedule 4.

**4.2 Shareholders' right to requisition a meeting**

The right of shareholders to requisition a meeting, as set out in section 61 (3), may be exercised -

\_\_\_\_\_ by the holders of at least 25% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, as provided for in that section.

\_\_\_\_\_ by the holders of at least \_\_\_\_\_% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite the provisions of that section.

**4.3 Location of shareholders meetings**

The authority of the Company's Board of Directors to determine the location of any shareholders meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9)-

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 4

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**4.4 Notice of shareholders meetings**

The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders, as required by section 62 -

\_\_\_\_\_ is as provided for in section 62 (1).

\_\_\_\_\_ is \_\_\_\_\_ business days before the meeting is to begin.

**4.5 Electronic participation in shareholders meetings**

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 4.

**4.6 Quorum for shareholders meetings**

(1) The quorum requirement for a shareholders meeting to begin, or for a matter to be considered are -

\_\_\_\_\_ as set out in section 64 (1) without variation.

\_\_\_\_\_ as set out in section 64 (1) subject to a minimum of \_\_\_\_\_% in substitution for the 25% required by that section.

(2) The time periods allowed in section 64 (4) and (5)

\_\_\_\_\_ apply to the Company without variation

\_\_\_\_\_ apply to the Company, subject to the variations set out in Part D of Schedule 4

(3) The authority of a meeting to continue to consider a matter, as set out in section 64 (9) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 4.

**4.7 Adjournment of shareholders meetings**

The maximum period allowable for an adjournment of a shareholders meeting is -

\_\_\_\_\_ as set out in section 64 (13), without variation.

\_\_\_\_\_ as set out in section 64 (13), subject to the variations set out in Part E of Schedule 4.

**4.8 Shareholders resolutions**

(1) For an ordinary resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least -

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- 
- \_\_\_\_\_ 50% of the voting rights exercised on the resolution, as provided in section 65 (7).
- \_\_\_\_\_ % of the voting rights exercised on the resolution, despite section 65 (7).
- \_\_\_\_\_ the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 4.
- (2) For a special resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least -
- \_\_\_\_\_ 75% of the voting rights exercised on the resolution, as provided in section 65 (7).
- \_\_\_\_\_ % of the voting rights exercised on the resolution, despite section 65 (7).
- \_\_\_\_\_ the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 4.
- (3) A special resolution adopted at a shareholders meeting is -
- \_\_\_\_\_ not required for a matter to be determined by the Company, except those matters set out in section 65 (11).
- \_\_\_\_\_ required, in addition to the matters set out in section 65 (11), for the matters set out in Part G of Schedule 4.

**Article 5 - Directors and Officers****5.1 Composition of the Board of Directors**

- (1) The Board of Directors of the Company comprises of \_\_\_\_\_ directors, and \_\_\_\_\_ alternate directors, to be elected by the shareholders as contemplated in section 68.
- (2) In addition to the elected directors -
- \_\_\_\_\_ there are no appointed or *ex officio* directors of the Company, as contemplated in section 66(4).
- \_\_\_\_\_ there are \_\_\_\_\_ appointed, and \_\_\_\_\_ *ex officio* directors of the Company, as contemplated in section 68, to be designated in the manner specified in Part A of Schedule 5.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director or a prescribed officer of the Company, a person -
- \_\_\_\_\_ need not satisfy any further eligibility requirements or qualifications.
- \_\_\_\_\_ must satisfy the additional eligibility requirements and qualifications set out in Part B of Schedule 5.
- (4) Each elected director of the Company serves for -

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- \_\_\_\_\_ an indefinite term, as contemplated in section 68 (1).  
\_\_\_\_\_ a term of \_\_\_\_\_ years.
- (5) The manner of electing directors of the Company is -  
\_\_\_\_\_ as set out in section 68 (2).  
\_\_\_\_\_ as set out in Part C of Schedule 5.
- (6) The authority of the Company's Board of Directors to fill any vacancy on the Board on a temporary basis, as set out in section 68 (3) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 5.

**5.2 Authority of the Board of Directors**

- (1) The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 5.
- (2) If, at any time, the Company has only one director, as contemplated in section 57 (3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part F of Schedule 5.

**5.3 Directors' Meetings and Committees**

- (1) The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part G of Schedule 5.
- (2) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised -  
\_\_\_\_\_ by at least 25% of the directors, as provided in that section; or  
\_\_\_\_\_ by at least \_\_\_\_\_% of the directors, despite the provisions of that section.
- (3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part H of Schedule 5.

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- 
- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part H of Schedule 5.
- (5) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part H of Schedule 5.
- (6) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are -  
\_\_\_\_\_ as set out in section 73 (5), without variation.  
\_\_\_\_\_ as set out in section 73 (5) subject to the variations set out in Part H of Schedule 5.

**5.4 Directors compensation and financial assistance**

- (1) The authority of the Company to pay remuneration to the Company's directors, in accordance with a special resolution approved by the Company's shareholders within the previous two years, as set out in section 66 (9) and (10) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part I of Schedule 5.
- (2) The authority of the Company's Board of Directors, as set out in section 45, to authorise the Company to provide financial assistance to a director, prescribed officer or other person referred to in section 45 (2) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part I of Schedule 5.

**5.5 Indemnification of Directors**

- (1) The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3) -  
\_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited, restricted or extended to the extent set out in Part J of Schedule 5.
- (2) The authority of the Company to indemnify a director in respect of liability, as set out in section 78 (5) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part J of Schedule 5.

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- (3) The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (6) -

\_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.

\_\_\_\_\_ is limited, restricted or extended to the extent set out in Part J of Schedule 5.

**5.6 Committees of the Board**

- (1) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2)(a) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part K of Schedule 5.

- (2) The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2) (b) and (c) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part K of Schedule 5.

**Article 6 - General Provisions**

*Insert any further provisions desired in this or additional Articles.*

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**Schedule 1 - Incorporation and nature of the Company**

**Part A**

*Insert -*

- (a) *any 'Ring fencing' provisions as contemplated in section 15 (2) of the Act; and*
- (b) *any provisions limiting the purposes or powers of the Company, as contemplated in section 19 (1)(b) of the Act.*

**Part B**

*Insert -*

- (a) *any provisions relating to the amendment of the Memorandum of Incorporation, as contemplated in section 16 (1)(c) of the Act; and*
- (b) *any provisions relating to the Board's authority to make rules for the Company, as contemplated in section 15 (3) to (5) of the Act.*

**Part C**

*Insert -*

- (a) *any provisions to subject the Company to Chapter 3 of the Act on a voluntary basis, as contemplated in section 34 (2) of the Act; and*
- (b) *any provisions to subject the Company to Parts B and C of Chapter 5 of the Act, and to the Takeover Regulations, on a voluntary basis as contemplated in section 118 (1)(c)(ii) of the Act.*



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**Schedule 2 - Company Securities****Part A***Insert -*

- (a) *any provisions setting out the classes of authorised shares, and maximum number of authorised shares of each class, and the preferences, rights, limitations and other terms of each class of shares, shares as contemplated in section 15 (2) of the Act; and*
- (b) *any provisions respecting the authority of the Board to exercise powers relating to shares, as contemplated in section 36 (3)(a) of the Act.*

**Part B***Insert any provisions restricting or limiting the authority of the Board to provide financial assistance to any person in relation to the subscriptions of securities or options, as contemplated in section 44 of the Act.***Part C***Insert any provisions restricting or limiting the authority of the Board with respect to the issuing of capitalisation shares, as contemplated in section 47 (1) of the Act.***Part D***Insert any provisions restricting or limiting the authority of the Board with respect to the issuing of debt instruments, as contemplated in section 43(2) or (3) of the Act.***Part E***Insert any provisions restricting or limiting the authority of the Board with respect to the registration of beneficial interests in the Company's securities, as contemplated in section 56 (1) of the Act.*

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**Schedule 3 - Shareholders**

**Part A**

*Insert any provisions limiting or restricting the right of shareholders to act without meeting formal requirements, as contemplated in section 57 (4) of the Act.*

**Part B**

*Insert any provisions relating to the powers of shareholders to appoint proxies, the appointment of proxies, and the powers of any such proxy, as contemplated in section 58 of the Act.*

**Part C**

*Insert any provisions respecting the fixing of a record date, as contemplated in section 59 of the Act.*

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## **Schedule 4 - Shareholders Meetings**

### **Part A**

*Insert any provisions imposing a requirement to hold a shareholders meeting.*

### **Part B**

*Insert any provision limiting or restricting the authority of the Board to determine the location of shareholders meetings, or the authority of the Company to meet outside the Republic.*

### **Part C**

*Insert any provision limiting or restricting the authority of the Board with respect to the use of electronic communication for shareholders meetings, as contemplated in section 63 of the Act.*

### **Part D**

*Insert any provision respecting the quorum requirements for shareholders meetings, or varying the provisions of section 64 of the Act.*

### **Part E**

*Insert any provision varying section 64 (13) of the Act with respect to the maximum period for adjournment of a shareholders meeting.*

### **Part F**

*Insert -*

- (a) any provision establishing different requirements for adoption of an ordinary resolution for different matters;*
- (b) any provision establishing different requirements for adoption of a special resolution for different matters; or*
- (c) Any provision imposing the requirement of a special resolution to approve any matter, as contemplated in section 65 (11) of the Act.*

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**Schedule 5 - Directors of the Company****Part A***Insert any provisions establishing the rights of any person to appoint a director, or establishing the right of any person to be an ex officio director of the Company.***Part B***Insert any provision imposing additional eligibility or qualification requirements for directors and prescribed officers of the Company.***Part C***Insert any provision establishing an alternative manner of electing directors, as contemplated in section 68 of the Act.***Part D***Insert any provision limiting or restricting the authority of the Board to temporarily fill a vacancy on the Board, as contemplated in section 68 (3) of the Act.***Part E***Insert any provision limiting or restricting the authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66 (1) of the Act.***Part F***Insert any provision limiting or restricting the authority of a lone director to act without regard for formalities, as contemplated in section 57 (3) of the Act.***Part G***Insert any provision limiting or restricting the authority of the Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act.***Part H***Insert any provision limiting, restricting or varying the authority of the Board with respect to the conduct of its meetings, as contemplated in section 73 of the Act.***Part I***Insert any provision limiting or restricting the authority of the Company to pay remuneration to its Directors, as contemplated in section 66 (1) of the Act, or limiting or restricting the authority of the Board to authorise the Company to provide financial assistance to a director or prescribed officer.***Part J***Insert any provision limiting, restricting or extending the authority of the Company to advance expenses to a director, indemnify a director, or purchase insurance to protect the Company or a director, as contemplated in section 78 of the Act.***Part K***Insert any provision limiting or restricting the authority of the Board with respect to the establishment of committees, as contemplated in section 72 of the Act.*

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**Form CoR 16.1(C)****Short Standard Form Memorandum of Incorporation for a Non-Profit Company without members****Republic of South Africa  
Companies Act, 2008****Memorandum of Incorporation  
of***[Name of Company]* \_\_\_\_\_

which is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number of Incorporator	Signature	Date

*[Use additional pages if necessary]*

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## **Article 1 - Incorporation and Nature of the Company**

### **1.1 Incorporation**

- (1) The Company is incorporated as from \_\_\_\_\_ as a non-profit company as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with and governed by -
  - (a) the provisions of the Companies Act, 2008 that are applicable to non-profit companies, without extension, limitation or variation; and
  - (b) the provisions of this Memorandum of Incorporation.

### **1.2 Objects and Powers of the Company**

- (1) The objects of the Company are set out in Part A of Schedule 1 of this Memorandum and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii).
- (2) The Company is not subject to any provisions contemplated in section 15 (2)(b) or (c).
- (3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1 (4)(b) of Schedule 2 of the Companies Act, 2008.

### **1.3 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152 (6)(b).-
- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- (3) The Company must publish any Rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each director by ordinary mail.-
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) by delivering a copy of those rules to each director by ordinary mail.-

### **1.4 Optional provisions of Companies Act, 2008 do not apply**

The Company does not elect, in terms of section 34 (2), to submit voluntarily to the provisions of Chapter 3 of the Companies Act, 2008.-

### **1.5 Company not to have members**

As contemplated in Item 4 (1) of Schedule 2 of the Act, the Company has no members.

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**Article 2 – Directors and Officers**

**2.1 Composition of the Board of Directors**

- (1) The Board of Directors of the Company comprises \_\_\_\_\_ directors, and \_\_\_\_\_ alternate directors, to be appointed in the manner set out in Part A of Schedule 2.
- (2) Each appointed director of the Company serves for an indefinite term, until substituted by the person or entity that appointed the director.

**2.2 Authority of the Board of Directors**

- (1) The authority of the Company's Board of Directors to –
  - (a) manage and direct the business and affairs of the Company, as set out in section 66;
  - (b) to consider a matter other than at a meeting, as set out in section 74;
  - (c) to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3);
  - (d) to determine the manner and form of providing notice of its meetings, as set out in section 73 (4); or
  - (e) to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5),is not limited or restricted by this Memorandum of Incorporation.
- (2) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the directors, as provided in that section.
- (3) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73 (5).

**2.3 Indemnification of Directors**

The authority of the Company to -

- (a) advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3);
- (b) indemnify a director in respect of liability, as set out in section 78 (5); or
- (c) purchase insurance to protect the Company, or a director, as set out in section 78 (6),

is not limited, restricted or extended by this Memorandum of Incorporation.



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**2.4 Committees of the Board**

- (1) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2)(a) is not limited or restricted by this Memorandum of Incorporation.
- (2) The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2) (b) and (c) is not limited or restricted by this Memorandum of Incorporation.

**2.5 Officers**

The Company has the following officers, to be elected by the Board:

**Schedule 1 - Incorporation and nature of the Company**

*Insert a statement of the objects of the Company, as required by item 1 of Schedule 2 of the Companies Act, 2008.*

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**Form CoR 16.1(D)**

**Long Standard Form Memorandum of Incorporation for a Non Profit Company without members**

**R e p u b l i c o f S o u t h A f r i c a  
C o m p a n i e s A c t , 2 0 0 8**

**Memorandum of Incorporation  
of**

[Name of Company] \_\_\_\_\_

which is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

The Schedules attached to this Memorandum of Incorporation are a part of this Memorandum of Incorporation.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number of Incorporator	Signature	Date

[Use additional pages if necessary]

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**Article 1 - Incorporation and Nature of the Company****1.1 Incorporation**

- (1) The Company is incorporated as from \_\_\_\_\_ as a non-profit company as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with and governed by -
  - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to non-profit companies; and
  - (b) the alterable provisions of the Companies Act, 2008 that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and
  - (c) the provisions of this Memorandum of Incorporation.

**1.2 Objects and Powers of the Company**

- (1) The objects of the Company are set out in Part A of Schedule 1 of this Memorandum.  
The Company -  
\_\_\_\_\_ is not subject to any provisions contemplated in section 15 (2)(b) or (c).  
\_\_\_\_\_ is subject to provisions contemplated in section 15 (2)(b) or (c), as set out in Part B of Schedule 1.
- (2) Except to the extent necessarily implied by clause (1) above, the purposes and powers of the Company -  
\_\_\_\_\_ are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii).  
\_\_\_\_\_ are subject to the restrictions, limitations or qualifications contemplated in section 19 (1)(b)(ii), as set out in Part B of Schedule 1.
- (3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with –
  - (a) Item 1 (4)(b) of Schedule 2 of the Companies Act, 2008; and
  - (b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

**1.3 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company -  
\_\_\_\_\_ may be altered or amended only in the manner set out in section 16, 17 or 152 (6)(b).  
\_\_\_\_\_ may be altered or amended in the manner set out in section 16, 17 or 152 (6)(b), subject to the provisions contemplated in section 16 (1)(c), as set out in Part D of Schedule 1.

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- 
- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) -  
\_\_\_\_\_ is not limited or restricted in any manner by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 1.
- (3) The Company must publish any Rules made in terms of section 15 (3) to (5) -  
\_\_\_\_\_ by delivering a copy of those rules to each director by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part D of Schedule 1.
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) -  
\_\_\_\_\_ by delivering a copy of those rules to each director by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part D of Schedule 1.

**1.4 Application of optional provisions of Companies Act, 2008**

The Company -

- \_\_\_\_\_ does not elect, in terms of section 34 (2), to submit voluntarily to the provisions of Chapter 3 of the Companies Act, 2008.
- \_\_\_\_\_ does elect, in terms of section 34 (2), to submit voluntarily to the provisions of Chapter 3 of the Companies Act, 2008.

**1.5 Company not to have members**

As contemplated in Item 4 (1) of Schedule 2 of the Companies Act, 2008, the Company has no members.

**Article 2 – Directors and Officers****2.1 Composition of the Board of Directors**

- (1) The Board of Directors of the Company comprises \_\_\_\_\_ directors, and \_\_\_\_\_ alternate directors, to be appointed in the manner set out in Part A of Schedule 2.
- (2) In addition to the appointed directors -  
\_\_\_\_\_ there are no *ex officio* directors of the Company, as contemplated in section 66 (4).  
\_\_\_\_\_ there are \_\_\_\_\_ *ex officio* directors of the Company, as contemplated in section 66, to be designated in the manner specified in Part A of Schedule 2.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director or a prescribed officer of the Company, a person -  
\_\_\_\_\_ need not satisfy any further eligibility requirements or qualifications.  
\_\_\_\_\_ must satisfy the additional eligibility requirements and qualifications set out in Part B of Schedule 2.

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- (4) Each appointed director of the Company serves for an indefinite term, until substituted by the person or entity that appointed the director.

**2.2 Authority of the Board of Directors**

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 2.

**2.3 Directors' meetings and committees**

- (1) The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 2.

- (2) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised -

\_\_\_\_\_ by at least 25% of the directors, as provided in that section; or

\_\_\_\_\_ by at least \_\_\_\_\_% of the directors, despite the provisions of that section.

- (3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 2.

- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 2.

- (5) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 2.

- (6) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are -

\_\_\_\_\_ as set out in section 73 (5), without variation.

\_\_\_\_\_ as set out in section 73 (5) subject to the variations set out in Part E of

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## Schedule 2.

**2.4 Indemnification of Directors**

- (1) The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3) -  
\_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited, restricted or extended to the extent set out in Part F of Schedule 2.
- (2) The authority of the Company to indemnify a director in respect of liability, as set out in section 78 (5) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part F of Schedule 2.
- (3) The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (6) -  
\_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited, restricted or extended to the extent set out in Part F of Schedule 2.

**2.5 Committees of the Board**

- (1) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2)(a) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part G of Schedule 2.
- (2) The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2) (b) and (c) -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part G of Schedule 2.

**Article 3 - General Provisions***[Insert any further provisions desired in this or additional Articles.]*

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**Schedule 1 - Incorporation and nature of the Company****Part A**

*Insert a statement of the objects of the Company, as required by item 1 of Schedule 2 of the Companies Act, 2008.*

**Part B**

*Insert -*

- (a) *any 'Ring fencing' provisions as contemplated in section 15 (2) (b) or (c) of the Act; and*
- (b) *any provisions limiting the purposes or powers of the Company, as contemplated in section 19 (1)(b) of the Act.*

**Part C**

*Insert provisions establishing, or providing for the establishment of, a scheme of distribution of the net assets of the Company upon its dissolution, as required by item 1 (4) of Schedule 2 of the Companies Act, 2008.*

**Part D**

*Insert -*

- (a) *any provisions relating to the amendment of the Memorandum of Incorporation, as contemplated in section 16 (1)(c) of the Act; and*
- (b) *any provisions relating to the Board's authority to make rules for the Company, as contemplated in section 15 (3) to (5) of the Act.*

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**Schedule 2 - Directors of the Company****Part A**

*Insert any provisions establishing the rights of any person to appoint a director, or establishing the right of any person to be an ex officio director of the Company.*

**Part B**

*Insert any provision imposing additional eligibility or qualification requirements for directors and prescribed officers of the Company.*

**Part C**

*Insert any provision limiting or restricting the authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66 (1) of the Act.*

**Part D**

*Insert any provision limiting or restricting the authority of the Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act.*

**Part E**

*Insert any provision limiting, restricting or varying the authority of the Board with respect to the conduct of its meetings, as contemplated in section 73 of the Act.*

**Part F**

*Insert any provision limiting, restricting or extending the authority of the Company to advance expenses to a director, indemnify a director, or purchase insurance to protect the Company or a director, as contemplated in section 78 of the Act.*

**Part G**

*Insert any provision limiting or restricting the authority of the Board with respect to the establishment of committees, as contemplated in section 72 of the Act.*



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**Form CoR 16.1(E)**  
**Long Standard Form Memorandum of Incorporation for a Non Profit Company with members****R e p u b l i c o f S o u t h A f r i c a**  
**C o m p a n i e s A c t , 2 0 0 8****Memorandum of Incorporation**  
**of***[Name of Company]* \_\_\_\_\_

which is referred to in the rest of this Memorandum of Incorporation as "the Company".

In this Memorandum of Incorporation -

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

The Schedules attached to this Memorandum of Incorporation are a part of this Memorandum of Incorporation.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13 (1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number of Incorporator	Signature	Date

*[Use additional pages if necessary]*

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**Article 1 - Incorporation and Nature of the Company****1.1 Incorporation**

- (1) The Company is incorporated as from \_\_\_\_\_ as a non-profit company as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with and governed by -
  - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to non-profit companies;
  - (b) the alterable provisions of the Companies Act, 2008 that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and
  - (c) the provisions of this Memorandum of Incorporation.

**1.2 Objects and Powers of the Company**

- (1) The objects of the Company are set out in Part A of Schedule 1 of this Memorandum.
- (2) The Company -  
\_\_\_\_\_ is not subject to any provisions contemplated in section 15 (2)(b) or (c).  
\_\_\_\_\_ is subject to provisions contemplated in section 15 (2)(b) or (c), as set out in Part B of Schedule 1.
- (2) Except to the extent necessarily implied by clause (1) above, the purposes and powers of the Company -  
\_\_\_\_\_ are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii).  
\_\_\_\_\_ are subject to the restrictions, limitations or qualifications contemplated in section 19 (1)(b)(ii), as set out in Part B of Schedule 1.
- (3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with –
  - (a) Item 1 (4)(b) of Schedule 2 of the Companies Act, 2008; and
  - (b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

**1.3 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company -  
\_\_\_\_\_ may be altered or amended only in the manner set out in section 16, 17 or 152 (6)(b).  
\_\_\_\_\_ may be altered or amended in the manner set out in section 16, 17 or 152 (6)(b), subject to the provisions contemplated in section 16 (1)(c), as set out in

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## Part D of Schedule 1.

- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) -  
\_\_\_\_\_ is not limited or restricted in any manner by this Memorandum of Incorporation.  
\_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 1.
- (3) The Company must publish any Rules made in terms of section 15 (3) to (5) -  
\_\_\_\_\_ by delivering a copy of those rules to each director by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part D of Schedule 1.
- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) -  
\_\_\_\_\_ by delivering a copy of those rules to each director by ordinary mail.  
\_\_\_\_\_ in accordance with the requirements set out in Part D of Schedule 1.

**1.4 Application of optional provisions of Companies Act, 2008**

The Company -

- \_\_\_\_\_ does not elect, in terms of section 34 (2), to submit voluntarily to the provisions of Chapter 3 of the Companies Act, 2008.
- \_\_\_\_\_ does elect, in terms of section 34 (2), to submit voluntarily to the provisions of Chapter 3 of the Companies Act, 2008.

**1.5 Members of the Company**

- (1) As contemplated in item 4 (1) of Schedule 2 of the Companies Act, 2008, the Company has members, who -  
\_\_\_\_\_ are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.  
\_\_\_\_\_ are in either of two classes, being voting and non-voting members respectively.
- (2) The terms and conditions of membership in the Company are as set out in Part E of Schedule 1 of this Memorandum.

**Article 2 - Rights of Members****2.1 Members' authority to act**

If, at any time, every member of the Company is also a director of the Company, as contemplated in section 57 (4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section -  
\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

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\_\_\_\_\_ is limited or restricted to the extent set out in Part A of Schedule 2.

## **2.2 Members' right to information**

In addition to the rights to access information set out in section 26 (2), a member of the Company has the further rights to information, if any, set out in Part B of Schedule 2 of this Memorandum of Incorporation.

## **2.3 Representation by concurrent proxies**

The right of a member of the Company to appoint 2 or more persons concurrently as proxies, as set out in section 58 (3)(a) -

\_\_\_\_\_ is not limited, restricted or varied by this Memorandum of Incorporation.

\_\_\_\_\_ is limited, restricted or varied to the extent set out in Part C of Schedule 2.

## **2.4 Authority of proxy to delegate**

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 2.

## **2.5 Requirement to deliver proxy instrument to the Company**

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58 (3)(c) -

\_\_\_\_\_ is not varied by this Memorandum of Incorporation.

\_\_\_\_\_ is varied to the extent set out in Part C of Schedule 2.

## **2.6 Deliberative authority of proxy**

The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58 (7) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 2.

## **2.7 Record date for exercise of member rights**

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is -

\_\_\_\_\_ as determined in accordance with section 59 (3).

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\_\_\_\_\_ as determined in the manner set out in Part D of Schedule 2.

**Article 3 - Members Meetings****3.1 Requirement to hold meetings**

The Company -

\_\_\_\_\_ is not required to hold any members meetings other than those specifically required by the Companies Act, 2008.

\_\_\_\_\_ is required to hold members meetings, in addition to those specifically required by the Companies Act, 2008, as set out in Part A of Schedule 3.

**3.2 Members' right to requisition a meeting**

The right of members to requisition a meeting, as set out in section 61 (3), may be exercised -

\_\_\_\_\_ by at least 25% of the voting members, as provided for in that section.

\_\_\_\_\_ by at least \_\_\_\_\_ % of the voting members

**3.3 Location of members meetings**

The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part B of Schedule 3.

**3.4 Notice of members meetings**

The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 -

\_\_\_\_\_ is as provided for in section 62 (1).

\_\_\_\_\_ is \_\_\_\_\_ business days before the meeting is to begin.

**3.5 Electronic participation in members meetings**

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part C of Schedule 3.

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**3.6 Quorum for members meetings**

- (1) The quorum requirement for a members meeting to begin, or for a matter to be considered are -
- \_\_\_\_\_ as set out in section 64 (1) without variation.
- \_\_\_\_\_ as set out in section 64 (1) subject to a minimum of \_\_\_\_\_% in substitution for the 25% required by that section.
- (2) The time periods allowed in section 64 (4) and (5)
- \_\_\_\_\_ apply to the Company without variation
- \_\_\_\_\_ apply to the Company, subject to the variations set out in Part D of Schedule 3.
- (3) The authority of a meeting to continue to consider a matter, as set out in section 64 (9) -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 3.

**3.7 Adjournment of members meetings**

The maximum period allowable for an adjournment of a members meeting is -

- \_\_\_\_\_ as set out in section 64 (13), without variation.
- \_\_\_\_\_ as set out in section 64 (13), subject to the variations set out in Part E of Schedule 3.

**3.8 Members resolutions**

- (1) For an ordinary resolution to be adopted at a members meeting, it must be supported by at least -
- \_\_\_\_\_ 50 % of the members who voted on the resolution, as provided in section 65 (7).
- \_\_\_\_\_ % of the members who voted on the resolution, despite section 65 (7).
- \_\_\_\_\_ the minimum percentage of members voting on the resolution, as set out in Part F of Schedule 3.
- (2) For a special resolution to be adopted at a members meeting, it must be supported by at least -
- \_\_\_\_\_ 75 % of the members who voted on the resolution, as provided in section 65 (7).
- \_\_\_\_\_ % of the members who voted on the resolution, despite section 65 (7).
- \_\_\_\_\_ the minimum percentage of the members who voted on the resolution, as set out in Part F of Schedule 3.

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- (3) A special resolution adopted at a members meeting is -
- \_\_\_\_\_ not required for a matter to be determined by the Company, except those matters set out in section 65 (11).
- \_\_\_\_\_ required, in addition to the matters set out in section 65 (11), for the matters set out in Part F of Schedule 3.

**Article 4 - Directors and Officers****4.1 Composition of the Board of Directors**

- (1) The Board of Directors of the Company comprises of \_\_\_\_\_ directors, and \_\_\_\_\_ alternate directors, to be elected by the voting members of the Company, in the manner set out in Part A of Schedule 4.
- (2) In addition to the elected directors -
- \_\_\_\_\_ there are no appointed or *ex officio* directors of the Company, as contemplated in section 66 (4).
- \_\_\_\_\_ there are \_\_\_\_\_ appointed, and \_\_\_\_\_ *ex officio* directors of the Company, as contemplated in section 66, to be designated in the manner specified in Part B of Schedule 4.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director or a prescribed officer of the Company, a person -
- \_\_\_\_\_ need not satisfy any further eligibility requirements or qualifications.
- \_\_\_\_\_ must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.
- (4) Each -
- (a) elected director of the Company serves for a term of \_\_\_\_\_ years; and
- (b) appointed director of the Company serves for an indefinite term, until substituted by the person or entity that appointed the director.

**4.2 Authority of the Board of Directors**

The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) -

- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part D of Schedule 4.

**4.3 Directors' Meetings**

- (1) The authority of the Company's Board of Directors to consider a matter other than at

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- 
- a meeting, as set out in section 74 -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part E of Schedule 4.
- (2) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised -
- \_\_\_\_\_ by at least 25% of the directors, as provided in that section; or
- \_\_\_\_\_ by at least \_\_\_\_\_ % of the directors, despite the provisions of that section.
- (3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part F of Schedule 4.
- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part F of Schedule 4.
- (5) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part F of Schedule 4.
- (6) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are -
- \_\_\_\_\_ as set out in section 73 (5), without variation.
- \_\_\_\_\_ as set out in section 73 (5) subject to the variations set out in Part F of Schedule 4.

**4.4 Indemnification of Directors**

- (1) The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (3) -
- \_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited, restricted or extended to the extent set out in Part G of Schedule 4.
- (2) The authority of the Company to indemnify a director in respect of liability, as set out in section 78 (5) -
- \_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.
- \_\_\_\_\_ is limited or restricted to the extent set out in Part G of Schedule 4.



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- (3) The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (6) -

\_\_\_\_\_ is not limited, restricted or extended by this Memorandum of Incorporation.

\_\_\_\_\_ is limited, restricted or extended to the extent set out in Part F of Schedule 2.

**4.6 Committees of the Board**

- (1) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2)(a) -

\_\_\_\_\_ is not limited or restricted this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part H of Schedule 4.

- (2) The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2) (b) and (c) -

\_\_\_\_\_ is not limited or restricted by this Memorandum of Incorporation.

\_\_\_\_\_ is limited or restricted to the extent set out in Part H of Schedule 4.

**Article 5 - General Provisions**

*[Insert any further provisions desired in this or additional Articles.]*

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**Schedule 1 - Incorporation and nature of the Company**

**Part A**

*Insert a statement of the objects of the Company, as required by item 1 of Schedule 2 of the Companies Act, 2008.*

**Part B**

*Insert -*

- (a) *any 'Ring fencing' provisions as contemplated in section 15 (2) (b) or (c) of the Act; and*
- (b) *any provisions limiting the purposes or powers of the Company, as contemplated in section 19 (1)(b) of the Act.*

**Part C**

*Insert provisions establishing, or providing for the establishment of, a scheme of distribution of the net assets of the Company upon its dissolution, as required by item 1 (4) of Schedule 2 of the Companies Act, 2008.*

**Part D**

*Insert -*

- (a) *any provisions relating to the amendment of the Memorandum of Incorporation, as contemplated in section 16 (1)(c) of the Act; and*
- (b) *any provisions relating to the Board's authority to make rules for the Company, as contemplated in section 15 (3) to (5) of the Act.*

**Part E**

*Insert the terms and conditions of each class of membership in the Company, as required by item 4 (2)(e) of Schedule 2 of the Companies Act, 2008; together with any additional terms and conditions that are consistent with terms Act.*

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**Schedule 2 - Rights of Members**

**Part A**

*Insert any provisions limiting or restricting the right of members to act without meeting formal requirements, as contemplated in section 57 (4) of the Act.*

**Part B**

*Insert any provisions creating addition information rights of members, as contemplated in section 26.*

**Part C**

*Insert any provisions relating to the powers of members to appoint proxies, the appointment of proxies, and the powers of any such proxy, as contemplated in section 58 of the Act.*

**Part D**

*Insert any provisions respecting the fixing of a record date, as contemplated in section 59 of the Act.*

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**Schedule 3 - Members Meetings**

**Part A**

*Insert any provisions imposing a requirement to hold a members meeting.*

**Part B**

*Insert any provision limiting or restricting the authority of the Board to determine the location of members meetings, or the authority of the Company to meet outside the Republic.*

**Part C**

*Insert any provision limiting or restricting the authority of the Board with respect to the use of electronic communication for members meetings, as contemplated in section 63 of the Act.*

**Part D**

*Insert any provision respecting the quorum requirements for members meetings, or varying the provisions of section 64 of the Act.*

**Part E**

*Insert any provision varying section 64 (13) of the Act with respect to the maximum period for adjournment of a members meeting.*

**Part F**

*Insert -*

- (a) any provision establishing different requirements for adoption of an ordinary resolution for different matters;*
- (b) any provision establishing different requirements for adoption of a special resolution for different matters; or*
- (c) Any provision imposing the requirement of a special resolution to approve any matter, as contemplated in section 65 (11) of the Act.*

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**Schedule 4 - Directors of the Company**

**Part A**

*Insert provision setting out the manner for the election of Directors by voting members.*

**Part B**

*Insert any provisions establishing the rights of any person to appoint a director, or establishing the right of any person to be an ex officio director of the Company.*

**Part C**

*Insert any provision imposing additional eligibility or qualification requirements for directors and prescribed officers of the Company.*

**Part D**

*Insert any provision limiting or restricting the authority of the Board to manage and direct the business and affairs of the Company, as contemplated in section 66 (1) of the Act.*

**Part E**

*Insert any provision limiting or restricting the authority of the Board to consider a matter other than at a meeting, as contemplated in section 74 of the Act.*

**Part F**

*Insert any provision limiting, restricting or varying the authority of the Board with respect to the conduct of its meetings, as contemplated in section 73 of the Act.*

**Part G**

*Insert any provision limiting, restricting or extending the authority of the Company to advance expenses to a director, indemnify a director, or purchase insurance to protect the Company or a director, as contemplated in section 78 of the Act.*

**Part H**

*Insert any provision limiting or restricting the authority of the Board with respect to the establishment of committees, as contemplated in section 72 of the Act.*

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