

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 120-r121

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part D – Takeover Panel Procedures

Regulation 122-r124

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:

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part D – Takeover Panel Procedures

Regulation 125

- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part D – Takeover Panel Procedures

Regulation 126-r128

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:

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part D – Takeover Panel Procedures

Regulation 128

- (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;

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part D – Takeover Panel Procedures

Regulation 128

- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 131

-
- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 133

-
- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 133

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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 –

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 134

-
- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 135

-
- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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;

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 136

-
- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 137-r138

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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 –

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 147-r148

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 152

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

Regulation 153-r156

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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 -

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

Regulation 163-r164

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

163. Intervenors

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E - Tribunal Proceedings

Regulation 173

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part F – Maximum Administrative Fines and Determination of Turnover

Regulation 174-r175

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 8 - Regulatory Agencies and Administration : Part A – Regulatory Agency Offices and Functions

Regulation 176

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).