

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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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Regulation 183

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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 is it 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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Regulation 184

- (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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- (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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- (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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Regulation 190

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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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Regulation 190

- (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

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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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

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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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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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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.

COMPANIES REGULATIONS
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Annexure 1 : Table CR 1 - Prescribed Forms

Regulation 191

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
Name Reservation	
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
Incorporation	
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
Amendments and Alterations (MOI)	
1) Major MOI Amendments	
a) Draft Amendment	50
b) Final Amendment	300
2) Minor MOI Amendments	100
Prospectus	
1) Draft Prospectus	
2) Final Prospectus	R5,000 daily rate or part thereof

COMPANIES REGULATIONS
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Annexure 2 : Table CR 2B – Commission Fee Schedule

Regulation 191

Activity	Proposed Fees
Application to deregister a Company	100
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
1) Turnover less than R10M	
Lodgement within 30 days after anniversary of incorporation	450
Lodgement after 60 days of anniversary of incorporation	600
2) Turnover greater than R10M and less than R50M	
Lodgement within 30 days after anniversary of incorporation	2,000
Lodgement after 30 days of anniversary of incorporation	2,500
3) Turnover greater than R50M	
Lodgement within 30 days after anniversary of incorporation	3,000
Lodgement after 30 days of anniversary of incorporation	4,000

COMPANIES REGULATIONS
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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
ANY PERSON	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.

COMPANIES REGULATIONS
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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
ANY NATURAL PERSON	<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>
THE TRIBUNAL	<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>

COMPANIES REGULATIONS
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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
THE COMMISSION	<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>
A COMPANY OR SIMILAR BODY CORPORATE	<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>
THE STATE OR A PROVINCE	<p>By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>
A MUNICIPALITY	<p>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.</p>	<p>On the date and at the time recorded on a receipt for the delivery.</p>

COMPANIES REGULATIONS
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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
A TRADE UNION	<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>
EMPLOYEES OF FIRM	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.
A PARTNERSHIP, FIRM OR ASSOCIATION	<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>
A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL	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

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

Regulation 191

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]

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Form CoR 16.1(A) : Short Standard Form Memorandum of Incorporation for a Private Company

Regulation 191

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Form CoR 16.1(A) : Short Standard Form Memorandum of Incorporation for a Private Company

Regulation 191

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.

COMPANIES REGULATIONS
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Form CoR 16.1(A) : Short Standard Form Memorandum of Incorporation for a Private Company

Regulation 191

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

COMPANIES REGULATIONS
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Form CoR 16.1(A) : Short Standard Form Memorandum of Incorporation for a Private Company

Regulation 191

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Form CoR 16.1(A) : Short Standard Form Memorandum of Incorporation for a Private Company

Regulation 191

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

Regulation 191

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]

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Form CoR 16.1(B) : Long Standard Form Memorandum of Incorporation for a Profit Company

Regulation 191

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 -
- the unalterable provisions of the Companies Act, 2008; and
 - the alterable provisions of the Companies Act, 2008, subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and
 - 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 -