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- (b) the offeror board opinion after taking account thereof, if the offer consideration comprises wholly or partly offeror securities as contemplated in regulation 110 (10);
  - (c) a description of the financing arrangements entered into by the offeror, including capital amount, interest rate, security given, period and repayment terms, if the offer is highly-leveraged, such that, as a result of the offer, the offeror will incur a high level of debt and the payment of interest, repayments or security for the debt will substantially depend on the business of the offeree regulated company; and
  - (d) if the offer consideration consists wholly or partly of offeror securities—
    - (i) the annual financial statements of the offeror for the last three financial periods; and
    - (ii) an audit reviewed pro forma balance sheet and pro forma income statement, and pro forma earnings and assets per security, as at the last financial year end, assuming a 100% successful offer result.
- (7) An offeree response circular must contain the following disclosures and information by the independent board—
- (a) The independent board's views on the offer and offer consideration, and its views of any other offers received during the offer period or within six months before the offer period;
  - (b) a comment on the statements contained in the offeror offer circular, insofar as is relevant;
  - (c) the following financial information:
    - (i) the annual financial statements of the offeree regulated company for the last three financial years and, if completed, the latest interim results, in IFRS interim reporting format without audit review; and
    - (ii) an auditor reviewed pro forma income statement and balance sheet, as at the last financial year end of the offeree regulated company, and the pro forma effects per offeree regulated company security, if the offeree regulated company holders will continue to hold some form of security after the offer;
  - (d) statements of direct and indirect beneficial interests in, or holdings of, securities, or actions to be effected—
    - (i) by the offeree regulated company in the offeror;
    - (ii) by directors of the offeree regulated company in the offeror and in any of the offeree regulated company's securities;

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- (iii) in the offeror and in the offeree regulated company by any person who, before the posting of the offeree response circular, was irrevocably committed—
- (aa) to accept or to reject the offer; or
- (bb) to vote in favour of or against the offer,
- together with the name of each such person;
- (iv) the details, including volumes, dates and prices of any dealings by any party whose holdings of securities are required to be disclosed by this regulation, if that person has dealt for value in the securities in question during the period beginning six months before the offer period and ending with the latest practicable date before the posting of the offeree response circular;
- or a negative statement if there are no such holdings;
- (e) material particulars of any service contract of any director or proposed director of the offeree regulated company with the offeree regulated company, or with any of its subsidiaries, or a statement that there are no such contracts, if that is the case;
- (f) particulars of service contracts entered into or amended within six months before the date of the offer period, or a statement that there are no such contracts, if that is the case;
- (g) a statement indicating whether or not any agreement exists between the offeree regulated company and—
- (i) the offeror or any of its concert parties;
- (ii) any of the directors or equivalent of the offeror, or persons who were directors or equivalent within the preceding 12 months; or
- (iii) holders of offeror securities or a beneficial interest in the offeror, or persons who were holders thereof or interested therein within the preceding 12 months if the agreement is considered to be material to a decision regarding the offer to be taken by the holders or offeror holders;
- and material terms of any such agreement;
- (h) the fair and reasonable opinion provided, in conformity with the applicable disclosure requirements in regulation 90 and the independent board opinion after taking account thereof in compliance with regulation 110;
- (i) a statement indicating whether the directors of the offeree regulated company intend, in respect of their own beneficial holdings of relevant securities, to accept or to reject the offer, or to vote in favour of or against the offer; and

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- (j) a statement—
- (i) that the independent board accepts responsibility for the information contained in the offeree response circular;
  - (ii) that to the best of its knowledge and belief, the information contained in the offeree response circular is true; and
  - (iii) that the report does not omit anything likely to affect the importance of such information.
- (8) If any director of the independent board is excluded from a statement required by sub-regulation (7)(j), the omission and the reasons for it must be stated in the offeree response circular.
- (9) A combined offer circular must contain the information required by sub-regulations (4) to (8).
- (10) Circulars subsequently sent to holders by an offeror or offeree regulated company must contain details of any material changes to previously published information contained in an earlier circular, or a statement that there has been no material change.
- (11) The following documents must lie for inspection at the offeror or offeree regulated company's registered office, or both, as applicable, from the date of posting of a circular until the end of the offer period—
- (a) the auditor's report and consent letter, if a forecast has been made;
  - (b) the audit review opinion and consent letter, if pro forma information has been disclosed;
  - (c) any document evidencing an irrevocable commitment to accept or to reject or vote in favour of or against an offer;
  - (d) the respective memorandum of incorporation of the offeree regulated company and of the offeror, if the offer consideration includes offeror securities; and
  - (e) the issued annual financial statements for the last three completed financial years of—
    - (i) the offeree regulated company; and
    - (ii) the offeror company, if the offer consideration includes offeror securities.
  - (f) Any document which is required to assist shareholders to make an informed decision on the merits or demerits of an affected transaction or offer and without limiting the generality of the foregoing, such documents includes property valuation reports, Competent Persons Reports compiled in accordance with SAMVAL code and Share Incentive Scheme Trust Deeds.

**Part D— Duties and Conduct of Offeree and Directors****107. Appointments to board of offeree**

From the date that a firm intention announcement is published, until the offer is declared unconditional, lapses or is withdrawn, the offeror and its concert parties must not —

- (a) appoint any person to the board of an offeree regulated company; or
- (b) exercise votes attaching to any securities held in the offeree regulated company, unless the votes are cast—
  - (i) on a resolution dealing with a matter unrelated to the offer; or
  - (ii) by proxy in accordance with regulation 111 (7).

**108. Duties of directors of offeree regulated companies**

- (1) In this regulation, a reference to “offeror directors” applies equally to trustees of trusts, partners of partnerships, members of a consortium and similar personae, if the offeror is not a company.
- (2) The directors of an offeree regulated company must not resign from the board of the offeree regulated company from the date of the firm intention announcement until the offer is declared unconditional, lapses or is withdrawn.
- (3) In an offer, and during the entire course of the offer proceedings—
  - (a) a director of the offeree regulated company, whether executive or non-executive, must fully disclose to the offeree regulated company board, any conflict of interest or potential conflict of interest, including its nature, in relation to such transaction immediately after the director becomes aware of the conflict; and
  - (b) the director concerned must assume a non-independent status, and inform the Board to that effect, if the director considers that the conflict or potential conflict may affect the director’s independence.
- (4) If a director does not make a declaration required by sub-regulation (3)(b), and the board of the offeree regulated company considers that director to be non-independent, the board must declare the director to be non-independent.
- (5) A non-independent director—
  - (a) may not tender an opinion or vote on any matter at a meeting of the independent board; and
  - (b) must withdraw from any deliberations of the independent board.

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- (6) Despite sub-regulation (5), the independent board may determine the extent of a non-independent director's attendance at any of its meetings for a defined purpose, such as furnishing factual information.
- (7) A determination of independence affects primarily offeree regulated company directors but may also be relevant to offerors.
- (8) The following situations are relevant in determining independence, but are not exhaustive:
- (a) A director who is a member of the boards of both an offeror and an offeree regulated company is presumed to be conflicted and non-independent, but this presumption is rebuttable at the instance of the independent board. If such a director is declared independent by the independent board, the director is conflicted at the offeror board/management level, and vice versa.
  - (b) A director of an offeree regulated company who holds vested shares or options ("vested securities") in the offeree regulated company, which vested securities—
    - (i) have an intrinsic value (as defined by International Financial Reporting Statements) which represents a material amount of the director's net worth; and/or
    - (ii) represent a material holding in the offeree regulated company;is presumed to be conflicted and non-independent, but the presumption is rebuttable at the instance of the independent board.
  - (c) A director of an offeree regulated company is non-independent if the director—
    - (i) holds unvested securities or options, and is offered any substitute share or option scheme, separate offer or acceleration of vesting periods that would give rise to a benefit in terms of an offer; or
    - (ii) is partial to the outcome of an offer because of an increased or decreased future benefit or loss of office or employment.
  - (d) A director of an offeree regulated company who is related or inter-related to any person who is, or would be considered, non-independent in relation to an offeree regulated company concerned, in terms of an offer, is rebuttably presumed to be non-independent.
- (9) An independent board should comprise a minimum of three independent directors, and if there are less than three independent directors, other persons must be appointed to the independent board by the existing board in accordance with the qualifications or other requirements set out in the Act.

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

Each member of an independent board and, where applicable, an independent board of an offeror, must—

- (a) take all reasonable steps to receive all necessary information to reach a fully informed opinion concerning an offer and prepare it for relevant securities holders;
- (b) meet with any appointed adviser to be briefed on all details of the offer, including the offer mechanism, terms, conditions and other relevant information;
- (c) while respecting regulatory timetables, allow sufficient time to discharge all duties and responsibilities, and resist haste and pressured time deadlines; and
- (d) become properly informed of the offeree regulated company's value per security or, where applicable, the offeror company's value per relevant security.

**110. Independent board opinion**

- (1) The independent board of an offeree regulated company that is the subject of an offer must obtain appropriate external advice from an independent expert in the form of a fair and reasonable opinion.
- (2) The independent board must take cognisance of the fair and reasonable opinion received in forming its own opinion on an offer consideration, which opinion must be communicated to the relevant offeree regulated company's security holders.
- (3) In order to enable the independent board to express an opinion on an offer and on the offer consideration, it must either—
  - (a) perform a valuation of the offeree regulated company's securities that are the subject of an offer, including an attributable value per security if the offer is a disposal of assets or undertaking in terms of Section 112; or
  - (b) place reliance upon a valuation of the offeree regulated company's securities that are the subject of an offer, including an attributable value per security if the offer is a disposal of assets or undertaking in terms of Section 112, as performed by the appointed independent expert after performing the requisite amount of work that satisfies the independent board that it is justified in placing reliance upon that valuation.
- (4) An independent board must form a clear basis for the expression of an opinion to relevant holders dealing with value and price compared to the consideration offered.
- (5) If the consideration offered per security exceeds either the estimated fair value per security or current traded price per security, but not both, a split opinion clearly detailing the independent board's view is required, e.g. fair but not reasonable or reasonable but not fair.

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

#### **111. Securities dealings, pricing, confirmations and general requirements**

- (1) Except for prohibited acquisitions in terms of Section 127(2)(b), an acquisition of securities in an offeree regulated company, that is or may be the subject of an offer, may be made before or during an offer period without Panel consent.
- (2) If an offer is made and the offeror, or any person acting in concert with the offeror, has acquired relevant securities in the offeree regulated company within the six month period before the commencement of the offer period, the offer consideration, per security, to the offeree regulated company's holders of securities of the same class must be—
  - (a) identical to, or where appropriate, similar to, the highest consideration paid, excluding commission, tax and duty, for those acquisitions; and

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- (b) accompanied by a cash consideration, at not less than the highest cash consideration paid per security, excluding commission, tax and duty, if securities that carry 5% or more of the voting rights currently exercisable at a class meeting of that class were acquired for cash.
- (3) If the offeror considers that the highest consideration per relevant security paid ought not to apply in a particular case, the offeror may consult the Panel, which in its discretion may agree to an adjusted offer consideration.
- (4) When an offer consideration is wholly or partly in cash, the offeror offer circular must include a statement, a copy of which must have been provided to the Panel, including—
- (a) an irrevocable unconditional guarantee issued by a South African registered bank; or
- (b) an irrevocable unconditional confirmation from a third party that sufficient cash is held in escrow;
- in favour of the holders of relevant securities for the sole purpose of fully satisfying the cash offer commitments.
- (5) A guarantee or confirmation contemplated in sub-regulation (4) must be written in a form that empowers the Panel to exercise the guarantee or confirmation, in whatever manner is required, on behalf of all holders of relevant securities once all conditions have been satisfied, if the offeror and its concert parties have failed to pay the cash consideration owing to holders of relevant securities entitled thereto by the due date.
- (6) If, after the firm intention announcement and before the offer closes, an offeror or any person acting in concert with it acquires relevant securities in the offeree regulated company at above the offer consideration per relevant security, the offeror must —
- (a) increase the offer consideration per security to not less than the highest consideration paid for the securities so acquired; and
- (b) immediately announce the revised offer consideration per relevant security and relevant dates, which announcement must be posted to the offeree regulated company's relevant securities holders.
- (7) An offeror may require a holder of relevant securities of an offeree regulated company, to give the offeror a proxy to vote in respect of those securities, as a stated term of acceptance, until the acceptance is withdrawn in terms of Regulation 105, and such a proxy may be exercisable—
- (a) on all matters in order to satisfy any announced conditions of the offer, if the offer is conditional; or
- (b) on all matters, if the offer is unconditional.



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- (8) Parties to an offer must take care not to issue statements that, while not factually inaccurate, may mislead holders of relevant securities and the market or may create uncertainty.
- (9) If a profit forecast or estimate is made on or after the date of publication of a firm intention announcement—
- (a) by an offeree regulated company, involved in an offer, on itself or on the offeror; or
  - (b) by an offeror, involved in an offer, on itself or on the offeree regulated company;
- any such forecast must be prepared in accordance with the Forecast Guide and reported upon by an auditor, or a similar professional registered with regulatory or professional body for auditors in another jurisdiction.
- (10) For the purpose of sub-regulation (9), “forecast(s)”—
- (a) has the meaning defined in the Revised Guide on Forecasts issued by the South African Institute of Chartered Accountants (“SAICA”), as amended from time to time (“the Forecast Guide”); and
  - (b) includes trading statements, general forecasts and specific forecasts as defined in the JSE Listings Requirements, as amended from time to time.

#### 112. Acquisition of own securities by offeree

During an offer period, an offeree regulated company and its subsidiary companies may not acquire the offeree regulated company’s own securities without—

- (a) the prior written approval of the Panel, and the approval of the holders of relevant securities; or
- (b) in terms of a pre-existing obligation or agreement entered into before the time contemplated in section 126 (1).

#### 113. Re-investment

- (1) In terms of section 119(6), the Panel may grant an exemption from the application of section 127(1) to the extent required to allow a re-investment alternative of the consideration offered (“re-investment consideration”) only to specific directors and management of an offeree regulated company if—
- (a) a fair and reasonable opinion from an independent expert has been 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 has been obtained in general meeting.

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- (2) An independent board must establish and disclose any benefits offered to any offeree regulated company director or employee by an offeror.

#### 114. Sales during an offer period

- (1) The Panel must not give consent for sales by an offeror, or by persons acting in concert with the offeror, of offeree regulated company securities that are the subject of a mandatory offer during the offer period.
- (2) The Panel may give consent for sales only 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 must be made at the offer price.
- (4) The Panel must require notice of any proposed sales, during an offer period, that it has consented to, which notice must be published at least 24 hours in advance of selling, and must state—
  - (a) the name of the offeror, or any person(s) acting in concert with the offeror, who 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 will be sold, or alternatively, a statement that the price, including a ratio arising from a securities swap, at which the securities are sold, will constitute the relevant offer price if an offer is made;
  - (d) that neither the offeror nor any persons acting in concert with the offeror may 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
  - (e) that an announcement or announcements will be made detailing the number and price, including a ratio arising from a securities swap, of securities sold, within 24 hours of any such sale being effected.

#### 115. Waivers

With respect to a waiver that is obtained in terms of regulation 86, for a period of six months immediately following the waiver—

- (a) the acquirer;
- (b) the subscriber or underwriter; and

- (c) any person who is acting in concert with a person contemplated in paragraphs (a) or (b),

must 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.

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**Part E— Takeover Panel Procedures****116. 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.
- (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.
- (3) A quorum for any properly convened meeting of the Panel is six members.
- (4) If a quorum is not present when a meeting of the Panel is to begin, that meeting is postponed for a period of not less than five days, as determined by the Chairperson, and at the quorum for the postponed meeting, will be three members.
- (5) The provisions of section 73 (3), read with the changes required by the context, apply with respect to meetings of the Panel, other than appeals or hearings, but a reference in that section to the board of a company must be read as referring to the Panel.

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

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

All documents relating to an Affected transaction as defined under section 117( c) of the Act, including announcements and circulars must be approved by the Panel before being posted or published.

**118. Consultations and Rulings**

- (1) Any person may approach the Panel through the Executive Director in accordance with section 201.
- (2) Advice given by the Executive Director during a consultation shall not constitute a Ruling of the Executive Director and as such shall not be binding on the panel and cannot be used by any party in any manner
- (3) A Ruling may be made by the Executive Director upon written application, or after a hearing.
- (4) In exercising the power to make a ruling, the Executive Director must—
  - (a) follow the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable to do otherwise; and
  - (b) respect confidentiality, except to the extent that the circumstances require otherwise.

- (5) Rulings will be given on the assumption that all information considered or provided is correct and complete.
- (6) Rulings may be formally withdrawn by the Executive Director or the Takeover Special Committee, in writing, if any information considered or provided proves to be incomplete or incorrect or if the parties by agreement applies that the ruling should be withdrawn.
- (7) If the Executive Director determines that a Ruling should be made available to the public—
  - (a) the Executive Director may require publication of a notice within a specified time stating that the Ruling has been placed on the Panel website;
  - (b) the Ruling is suspended until the required notice has been published; and
  - (c) if the person directed to publish the notice fails to do so within the specified time, the Executive Director may procure publication of the notice at the expense of that person.
- (8) Any person issued with a Ruling may apply to the Takeover Special Committee for a hearing regarding the Ruling within—
  - (a) 5 business days after receiving that Ruling; or
  - (b) such longer period as may be allowed by the Committee on good cause shown.
- (9) 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.
- (10) 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.
- (11) A decision by the Takeover Special Committee in terms of this regulation is binding, subject to any right of review or appeal by a court.

**119. 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 is entitled to—
    - (i) state its case in writing beforehand;
    - (ii) call witnesses to give relevant evidence, and question any witness called by another party; and
    - (iii) present argument orally, in writing, or both;

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- (b) the Executive Director or Takeover Special Committee, as the case may be, may call any evidence;
  - (c) neither the Executive Director nor the Takeover Special Committee is obliged to apply the law of evidence;
  - (d) the Executive Director or the Takeover Special Committee, as the case may be, must follow the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable to do otherwise; and
  - (e) the procedures may be conducted in as informal a manner as is consistent with the requirements of the Act and this regulation.
- (2) The proceedings of hearings may be recorded at the discretion of the Executive Director or Takeover Special Committee, as the case may be, and any such recording may be transcribed, subject to any conditions that the Executive Director or Takeover Special Committee may prescribe.
- (3) The Executive Director or chairperson of the Takeover Special Committee, as the case may be—
- (a) must preside and control the proceedings at hearings; and
  - (b) may prescribe the date and time of each hearing, and the time within which any particular action is to be taken; and
  - (c) must give written decisions, supported by reasons and a background summary of the matter, to the parties as soon as reasonably practicable.
- (4) If the Executive Director or the Takeover Special Committee, as the case may be, determines that a decision should be made available to the public—
- (a) the Executive Director or the Takeover Special Committee may require publication of a notice within a specified time, stating that the decision has been placed on the Panel website; and
  - (b) if the person directed to publish the notice fails to do so within the specified time the Executive Director may procure publication of the notice at the expense of that person.

**120. Reviews**

The provisions of regulation 119 (2), (3) and (4), read with the changes required by the context, apply with respect to the hearing of reviews by the Takeover Special Committee.

**121. Reporting to Panel**

- (1) A person who has acquired or disposed of any beneficial interest in a class of securities of a regulated company in a sufficient quantity that, as a result of that transaction, the person's total holdings of that class of securities transitted a

percentage threshold contemplated in section 122 (1) must give the notice required by that section in Form TRP 121.1.

- (2) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter reporting compliance by a company in terms of —
  - (a) Section 122 (3)(a) requires completion and delivery to the Panel of Form TRF 121.2; and
  - (b) 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.
- (3) If a regulated company becomes aware that a person has failed to make a disclosure required by section 122, the regulated company must lodge a complaint with the Panel in terms of Section 168 of the Act.

#### **122. Panel Services, fees and levies**

- (1) The services provided by the Panel fall into the following categories:
  - (a) providing verbal information and advice of a preliminary and general nature on the provisions of Chapter 5 of the Act and this Chapter;
  - (b) consultations in the course of which specific or general advice may be provided orally or in writing, which in any case is not binding and does not constitute a Ruling;
  - (c) Rulings issued in specific matters;
  - (d) examination of documents submitted for the Panel's approval; and
  - (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) If a charge is to be calculated on the basis of the value of securities to be issued as consideration, that value will be computed by reference to—
  - (a) the ruling market price of the relevant securities on the JSE Limited on the business day immediately before the firm intention announcement of the affected transaction; or
  - (b) by reference to the estimate of the value of any unlisted securities consideration offered.
- (4) If the offeree regulated company is unlisted, a further fee of R11 400 (VAT inclusive) will be payable.
- (5) If there are alternative offers, the alternative offer with the highest value will be used to calculate the value of the affected transaction.

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## Regulation 122

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- (6) Comparable offers require all classes of securities to be included in the calculation of the consideration value for fee purposes.
  - (7) For hearings or reviews before the Executive Director or the Takeover Special Committee, the fees will be charged at the rate of R3 420 (VAT inclusive) per billable hour, or part thereof;
  - (8) In addition to the fees and charges referred to above, the following items may also be charged in respect of any particular matter:
    - (a) the cost of serving any subpoenas;
    - (b) the cost of recording proceedings;
    - (c) the cost of any expert engaged by the Panel; and
    - (d) any other necessary or desirable disbursements incurred in connection with the particular matter.
  - (9) Fees and charges must be paid—
    - (a) in the case of services referred to in sub-regulation (1)(b), by the party requesting the service;
    - (b) in the case of services referred to in sub-regulation (1)(c), by the party requesting the service;
    - (c) in the case of services referred to in sub-regulation (1)(d), by the offeror or offeree regulated company, as the case may be;
    - (d) in the case of services referred to in sub-regulation (1)(e), 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 a hearing or review to pay the fees and charges or to make a contribution in respect of them;
  - (10) The Panel may in its discretion waive or reduce any fees or charges.
  - (11) 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 102.
  - (12) The Panel shall not have power to order any party involved in hearings to pay the costs of any other party, other than its own costs.



## Chapter 6 - Business Rescue

### Part A – Business Rescue Proceedings

#### 123. Notices to be issued by a company concerning its business rescue proceedings

See: s. 129 (3), (4)(b) and (7), and s. 131 (8)

- (1) A Notice of Commencement of Business Rescue Proceedings, contemplated in section 129, must be in form CoR 123.1, and filed in accordance with section 129, together with a copy of the board resolution to commence business rescue proceedings.
- (2) After filing its Notice of Commencement of Business Rescue Proceedings, the company must publish that Notice as required in section 129 (3)(a), by—
  - (a) delivering a copy of the Notice and resolution to every affected person in accordance with regulation 7; and
  - (b) conspicuously displaying a copy of the Notice—
    - (i) at the registered office of the company, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.
- (3) A Notice of Appointment of a Business Rescue Practitioner by the company, as contemplated in section 129 (3), must be in form CoR 123.2, and filed in accordance with section 129 (4)(a).
- (4) After filing its Notice of Appointment of a Business Rescue Practitioner, the company must publish a copy of that Notice as required in section 129 (4)(b), by either—
  - (a) delivering a copy of the Notice to each affected person in accordance with regulation 7; or
  - (b) informing each affected person of the availability of a copy of the Notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (5) A company whose board 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 either—
  - (a) deliver a notice in Form CoR 123.3 to each affected person in accordance with regulation 7; or

## Chapter 6 - Business Rescue : Part A – Business Rescue Proceedings

## Regulation 124-r125

- (b) inform each affected person of the availability of a copy the Notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (6) A company that is placed under business rescue proceedings by a court order in terms of section 131, must notify each affected person, as required by section 131 (8)(b), by—
- (a) delivering a copy of the court order to every affected person in accordance with regulation 7; and
  - (b) conspicuously displaying a copy of the court order—
    - (i) at the registered office of the company, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.

**124. Notices to be issued by affected persons concerning court proceedings**

*See s. 130 (3)(b) and 131 (2)(b)*

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 deliver a copy of the court application, in accordance with regulation 7, to each affected person known to the applicant.

**125. Notices to be issued by practitioner concerning business rescue proceedings**

*See s. 132 (3)(b), 141 (2)(b), 144 (3), 145 (1)(a), 146 (a), 151 (2) and 152 (8)*

- (1) A business rescue practitioner who is required by section 132 (3)(b) to report to affected persons on the progress of business rescue proceedings, or required by section 141 (2)(b) to inform the court, the company and affected persons as to the prospects for rescue of the company, must prepare and file a Notice Concerning the Status of Business Rescue Proceedings in Form CoR 125.1, deliver a copy of that Notice to the court and to the company, and must either—
- (a) deliver a copy of that notice to each affected person in accordance with regulation 7; or
  - (b) inform each affected person of the availability of a copy of that notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (2) 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—

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- (a) serving any such notice to the head office of a relevant trade union, as required by section 144 (3)(a);
  - (b) either—
    - (i) delivering a copy of any such notice in accordance with regulation 7 to any affected person entitled to receive it, and who has not been served in terms of paragraph (a); or
    - (ii) informing each affected person of the availability of a copy of the notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6; and
  - (c) conspicuously displaying a copy of the notice—
    - (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.
- (3) A business practitioner must publish a proposed business rescue plan, as required by section 150 (5), by—
- (a) informing each affected person of the availability of the plan, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6;
  - (b) conspicuously displaying a notice of the availability of the plan—
    - (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange; and
  - (c) providing a free copy of the plan to any affected person who requests such a copy.
- (4) A Notice of Termination of Business Rescue Proceedings, as contemplated in section 141 (2)(b)(ii), must be in Form CoR 125.2.

## Chapter 6 - Business Rescue : Part A – Business Rescue Proceedings

## Regulation 125

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- (5) A Notice of Substantial Implementation of a Business Rescue Plan, as contemplated in section 152 (8), must be in Form CoR 125.3.
- (6) A business rescue practitioner who has filed a Notice of Termination of Business Rescue Proceedings, or a Notice of Substantial Implementation of a Business rescue Plan, must—
- (a) conspicuously display a copy of the notice—
- (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
  - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
  - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange; and
- (b) either—
- (i) deliver a copy of the notice to each affected person in accordance with regulation 7; or
  - (ii) inform each affected person of the availability of a copy of that notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.

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**Part B – Business Rescue Practitioners****126. Accreditation of professions and licensing of business rescue practitioners**

*See s. 138 (1)(a), (2) and (3)*

- (1) (a) The Commission must, when considering an application for accreditation of a profession under section 138(1), have due regard to the qualifications and experience that are set as conditions for membership of any such profession, and the ability of such profession to discipline its members and the Commission may revoke any such accreditation if it has reasonable grounds to believe that the profession is no longer able to properly monitor or discipline its members.
- (b) Sub-regulation (2) – (8) do not apply to any person who is eligible to be appointed as a business rescue practitioner in terms of section 138 (1) (a).
- (2) A person may apply to the Commission for a license to serve as a business rescue practitioner, as contemplated in section 138 (1)(b), by filing Form CoR 126.1, together with the fee set out in Table CR 1.
- (3) When considering an application in terms of sub-regulation (2), the Commission may require the applicant to provide—
  - (a) further information relevant to the application; or
  - (b) evidence in support of any facts set out in the application.
- (4) Subject to sub-regulation (5), the Commission may issue a business rescue practitioner's licence to an applicant if the Commission is satisfied that—
  - (a) the applicant is of good character and integrity; and
  - (b) the applicant's education and experience are sufficient to equip the applicant to perform the functions of a business rescue practitioner.
- (5) The Commission must not issue a license to an applicant who is disqualified from appointment as a practitioner in terms of section 138 (1)(c) or (d).
- (6) After considering an application, the Commission must either—
  - (a) issue a license as applied for in Form CoR 126.2;
  - (b) issue a conditional license, on terms that are reasonable having regard to the applicant's education and experience; or
  - (c) refuse to issue the license, by notice in writing to the applicant, setting out the reasons for the refusal.
- (7) The Commission, by notice in writing to a licensee—

## Chapter 6 - Business Rescue : Part B – Business Rescue Practitioners

## Regulation 127

- (a) must revoke the license of a person who, after being licensed, becomes disqualified from appointment as a practitioner in terms of section 138 (1)(c) or (d); and
  - (b) may suspend or revoke a license if the Commission has reasonable grounds to believe that the person is no longer qualified to be licensed, or has contravened the conditions of the license.
- (8) An applicant whose application has been refused, or who has been issued a conditional license, or a licensee whose license has been suspended or revoked, may apply to the Tribunal to review the Commission's decision in the matter, and the Tribunal may partially or entirely confirm or set aside the Commission's decision.

**127. Restrictions on practice**

*See s. 138 (3)(b)*

- (1) This regulation—
- (a) applies to any person who is eligible to be appointed as a business rescue practitioner in terms of section 138 (1) (a) and (b), irrespective of whether that eligibility arises in terms of a license issued by the Commission, or otherwise as contemplated in section 138 (1)(a); and
  - (b) is subject to any more restrictive condition imposed by the Commission in terms of regulation 126 (6)(b), in the case of a licensee contemplated in section 138 (1)(b).
- (2) For the purposes of this regulation, and in Regulation 128—
- (a) **“business turnaround practice”** means activities of a professional nature engaged in before the effective date, that are comparable to the functions of a business rescue practitioner in terms of the Act;
  - (b) Companies undergoing business rescue proceedings are classified in the following three groups:
    - (i) **“large companies”**, being any company, other than a state owned company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is 500 or more;
    - (ii) **“medium companies”** being—
      - (aa) any public company whose most recent public interest score, as calculated in terms of regulation 26 (2), is less than 500; or
      - (bb) any other company, other than a state owned company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is at least 100 but less than 500; and

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- (iii) **“small companies”** being any company, other than a state owned or public company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is less than 100; and
- (c) Persons eligible to be appointed as practitioners are classified in the following three groups:
- (i) **“senior practitioner”** means a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of at least 10 years.
- (ii) **“experienced practitioner”** being a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of at least 5 years;
- (iii) **“junior practitioner”** means a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has either—
- (aa) not previously engaged in business turnaround practice before the effective date of the Act, or acted as a business rescue practitioner in terms of the Act; or
- (bb) has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of less than 5 years.
- (3) A junior practitioner—
- (a) may be appointed as the practitioner for any particular small company; but
- (b) may not be appointed as the practitioner for any medium or large company, or for a state owned company unless as an assistant to an experienced or senior practitioner.
- (4) An experienced practitioner—
- (a) may be appointed as the practitioner for any particular small or medium company; but
- (b) may not be appointed as the practitioner for any large company, or for a state owned company unless as an assistant to a senior practitioner.

Chapter 6 - Business Rescue : Part B - Business Rescue Practitioners

Regulation 128

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- (5) A senior practitioner may be appointed as the practitioner for any company.

**128. Tariff of fees for business rescue practitioners**

*See s. 143*

- (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 1250 per hour, to a maximum of R 15 625 per day, (inclusive of VAT) in the case of a small company.
  - (b) R 1500 per hour, to a maximum of R 18 750 per day, (inclusive of VAT) in the case of a medium company; or
  - (c) R 2000 per hour, to a maximum of R 25 000 per day, (inclusive of VAT) in the case of a large company, or a state owned company.
- (2) Sub-regulation (1) does not apply to, limit or restrict any 'further remuneration' for a business rescue practitioner, as contemplated in section 143 (2) to (4).
- (3) 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.



## Chapter 7 - Complaints, Applications and Tribunal Hearings

### Part A— Definitions Used in This Chapter

#### 129. Definitions

In this Chapter, unless the context indicates otherwise—

- (a) “**Answer**” means a document as described in regulation 143 and filed by a respondent;
- (b) “**applicant**” means a person who submits an application to the Tribunal in terms of the 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 regulations 140 (3) and 141 for the purposes contemplated in section 170 (1)(b);
- (f) “**Dispute Referral**” means an initiating document as described in regulation 132 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**”—
  - (i) in the case of a Complaint Referral, means the Commission, or other person referred to in regulation 141;
  - (ii) in the case of a Dispute Referral, means the person who referred the matter to the Tribunal or accredited entity in terms of section 166 (1), read with regulation 132;
  - (iii) in any other proceedings before the Tribunal, means the Applicant;

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

## Regulation 129

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- (i) **“intervenor”** means any person who has been granted standing to participate in particular proceedings before the Tribunal in terms of section 181 (c), read with regulation 159;
  - (j) **“presiding member”** means the member of the Tribunal designated by the chair to preside over particular proceedings;
  - (k) **“Reply”** means a document as described in regulation 144 and filed by an initiating party in response to an Answer;
  - (l) **“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) any other person concerned, except 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;
  - (m) **“sheriff”** means a person appointed in terms of section 2 of the Sheriff's Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively.

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**Part B— Forms and Notices with respect to certain remedies****130. Request for Commission or Panel to act on behalf of complainant**

*See s. 157 (2).*

A complainant may give written authorization to the Commission or the Panel to commence proceedings in the name of the complainant, as contemplated in section 157 (2), by so indicating on Form CoR 135.1 at the time of filing a complaint.

**131. Notice of availability of system to receive confidential disclosures**

*See s. 159 (7)*

A company that is required by section 159 (7) to establish and maintain a system to receive disclosures contemplated in section 159 must publicize the availability of that system by conspicuously displaying a notice to that effect, setting out the contact details of the person responsible for receiving any such disclosure—

- (a) at the registered office of the company, the principal places of conducting the business activities of the company, and at any workplace where employees of the company are employed;
- (b) on any website that is maintained by the company and intended to be accessible by the categories of persons enumerated in section 159 (4); and
- (c) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.

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### **Part C—Alternative Dispute Resolution**

#### **132. Alternative dispute resolution procedures**

*See s. 156 (a), 157, 158, 166 (1) and 169 (1)(b)*

- (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) and elsewhere in the Act, by filing a completed Form CTR 132.1 with the Tribunal or the accredited entity.
- (2) The Commission or the Panel may refer a complaint to be resolved by alternative dispute resolution, as contemplated in section 169 (1)(b), by delivering a copy of Form CTR 132.2, to the complainant, the respondent and the Tribunal or accredited dispute resolution entity.
- (3) A Certificate of Failed Dispute Resolution, as contemplated in section 166 (2), must be in Form CTR 132.3.

#### **133. Forms of order resulting from alternative dispute resolution procedures**

*See s. 167*

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.

#### **134. Accreditation of alternative dispute resolution providers**

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

- (1) An application for accreditation as an alternative dispute resolution provider must be made to the Commission in Form CoR 134.1
- (2) A certificate accrediting an entity as an alternative dispute resolution provider must be in Form CoR 134.2

**Part D— Commission or Panel Complaint and Investigation Procedures****135. Filing of complaints with the Commission**

*See s. 156 (d), 157, 168 and 169 (1).*

- (1) A complaint filed with the Commission or the Panel must be in Form CoR 135.1.
- (2) At any time before the Commission or Panel has concluded its consideration of a complaint, the complainant may withdraw the complaint.
- (3) The Commission or the Panel may continue to investigate a complaint after it has been withdrawn, as if the Commission or Panel had initiated it as contemplated in section 168 (2).
- (4) A notice of non-investigation of a complaint by the Commission or the Panel, as contemplated in section 169 (1)(a), must be in Form CoR 135.2.

**136. Multiple complaints**

- (1) At any time after a complaint has been initiated by the Commission or the Panel, or submitted by another person, the Commission or Panel, as the case may be, may publish a notice disclosing an alleged contravention of the Act and inviting any person who believes that the alleged contravention has affected or is affecting a material interest of that person to file a further complaint in respect of that matter.
- (2) The Commission or the Panel may consolidate two or more complaints under a common investigation if they concern the same person as potential respondent, and substantially the same conduct by that person.
- (3) If the Commission or the Panel 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 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 or the Panel may continue to investigate any of the remaining consolidated complaints.

**137. Investigation of complaints**

*See s. 169 and 176 to 179*

- (1) A notice to investigate issued by the Commission or the Panel in terms of section 169 (1)(c) must be in Form CoR 137.1

## Chapter 7 - Complaints, Applications and Tribunal Hearings : Part D— Commission or Panel Complaint and Investigation Procedures

## Regulation 138

- (2) A summons issued by the Commission or the Panel in terms of section 176 (1) must be in Form CoR 137.2.
- (3) If a person to whom a summons has been issued 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.
- (4) After the summons has been issued, it must be served by the sheriff in any manner authorised by the High Court Rules.
- (5) A person who has been required to produce any document or thing to the Commission must hand it over to the recording officer as soon as possible after service of the summons, unless the person claims that the document or thing is privileged.
- (6) At any time during an investigation, the Commission or the Panel, as the case may be, may—
  - (a) informally request additional information from a party; or
  - (b) require a party to provide additional information, at any time, by delivering to the party a demand in Form 137.3, setting out the specific information that is required.
- (7) If, at any time, the Commission or the Panel has reasonable grounds to believe that a document filed in respect of an investigation contains false or misleading information, the Commission or Panel may issue a Demand for Corrected Information in Form 137.4 to the person who filed that document.
- (8) Within 5 business days after being served with a Demand for Corrected Information, the person concerned may apply to the Tribunal for an order confirming or setting aside the Demand.
- (9) If a person does not apply to the Tribunal within the time allowed by sub-regulation (8) or, if the Tribunal, on hearing the appeal, partially or entirely confirms the Demand, the person concerned must file corrected information.
- (10) If the Tribunal, on hearing an application in terms of sub-regulation (8), sets aside the Demand entirely, the Demand is a nullity.

**138. Resolving complaints by proposed consent order**

*See s 170 (1)(d) and 173*

- (1) If, at any time before concluding its consideration of a complaint, the Commission believes that the respondent may be prepared to agree terms of a proposed order, the Commission may—
  - (a) notify the complainant, in writing, that a consent order may be recommended; 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 or an alternative remedy under such an order; and
  - (ii) if so, the amount of damages claimed or particulars of the alternative remedy.
- (2) If the Commission and the respondent agree the terms of an appropriate order, the Commission must—
  - (a) refer the complaint to the High Court in accordance with its Rules;
  - (b) attach to the referral—
    - (i) a draft order in a form consistent with the High Court Rules, and—
      - (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 138, 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 the complainant expressly consented that order for damages in Form CoR 138.
- (4) A draft consent order may be submitted to the Court 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.

### 139. Compliance notices and certificates

*See s. 170 (1)(g), 171 and 172*

- (1) A Compliance Notice issued by the Commission, or by the Executive Director of the Panel, as contemplated in section 171, must be in Form CoR 139.1.
- (2) A Compliance Certificate issued by the Commission, or by the Executive Director of the Panel, as contemplated in section 171, must be in Form CoR 139.2.

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Regulation 140

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**140. Procedures following investigation**

*See s. 170*

- (1) A Notice of Referral by the Commission or the Panel of a complaint to another regulatory agency, as contemplated in section 170 (1) (b), must be in form CoR 140.1 and delivered to the complainant, the respondent, and the other relevant regulatory agency.
- (2) A Notice of Non-referral issued by the Commission or the Panel, as contemplated in section 170 (1)(c), must be in Form CoR 140.2.
- (3) A Complaint Referral to the Tribunal must be in Form CTR 140, and—
  - (a) may allege alternative contraventions of the Act based on the same facts; and
  - (b) must be supported by an affidavit setting out in numbered paragraphs—
    - (i) a concise statement of the particulars of the complaint; and
    - (ii) the points of law, or material facts relevant to the complaint; and
  - (c) must be served on each person named as a respondent.



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**Part E— Initiating Tribunal Procedures****141. Complaint Referrals to the Tribunal**

A complaint proceeding to be adjudicated by the Tribunal may be initiated only by filing a Complaint Referral as contemplated in section 170 (1)(b), and in accordance with regulation 140.

**142. Applications to the Tribunal in respect of matters other than complaints**

- (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 142; 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, stating the section of the Act or these regulations in terms of which the Application is made; and
  - (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; or
  - (c) indicate the order sought; and
  - (d) state the name and address of each person in respect of whom an order is sought.

**143. Answer**

- (1) Within 20 business days after being served with a Complaint Referral, or an application, that has been filed with the Tribunal, a respondent who wishes to oppose the complaint or application must—
  - (a) serve a copy of an Answer on the initiating party; and
  - (b) file the Answer with proof of service.

## Chapter 7 - Complaints, Applications and Tribunal Hearings : Part E— Initiating Tribunal Procedures

## Regulation 144-r145

- (2) An Answer that raises only a point of law must set out the question of law to be resolved.
- (3) Any other Answer must be in affidavit form, setting out in numbered paragraphs—
  - (a) a concise statement of the grounds on which the complaint or application 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 or application.
- (4) An allegation of fact set out in an initiating document that is not specifically denied or admitted in an Answer must be regarded as having been admitted.
- (5) In an Answer, the respondent must qualify or explain a denial of an allegation, to the extent necessary in the circumstances.

**144. Reply**

- (1) Within 15 business days after being served with an Answer that raises issues not addressed in the initiating document, other than a point of law alone, the initiating party may—
  - (a) serve a Reply on the other parties; 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.
- (3) If the initiating party 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.

**145. Amending documents and Notices of Motion**

- (1) The initiating party may apply to the Tribunal by Notice of Motion at any time before the end of the hearing of the matter for an order authorising them to amend their initiating document as filed.
- (2) If the Tribunal allows an 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.
- (3) A Notice of Motion to be made before the Tribunal, for any purpose in terms of the Act and these regulations, must be in Form CTR 145.

**146. Completion of file**

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

**147. 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 147.
- (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 at the earliest convenient date.

**148. 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 148 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.
- (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 for an appropriate order for costs.

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**Part F – Conduct of Tribunal Proceedings****149. 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 initiating party;
  - (b) each complainant in the matter;
  - (c) each Respondent; and
  - (d) any intervenors.
- (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
  - (b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal.
- (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 rules of procedure, and are not open to the public.
- (5) 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 matter.
- (6) 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.
- (7) 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.
- (8) 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 regulation apply to such a conference.

#### **150. Settlement conference**

At any time before the Tribunal makes a final order in a matter, 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.

#### **151. 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 151 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.

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part F – Conduct of Tribunal Proceedings

Regulation 152-r155

#### **152. 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) the 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.

#### **153. 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 to have the order, as applied for, 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.

#### **154. 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 Rules.
- (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.

#### **155. 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, and any answers or replies filed in the matter;

- (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.

#### 156. Costs and taxation

- (1) Upon making an order, the Tribunal may make an order for costs.
- (2) If 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 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 -

## Chapter 7 - Complaints, Applications and Tribunal Hearings : Part F – Conduct of Tribunal Proceedings

## Regulation 157-r158

- (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.

**157. 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, telephone number or email address are available, those details.
- (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.

**158. 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.
- (5) No joinder or substitution in terms of this rule will affect any prior steps taken in the proceedings.

#### 159. Intervenor

- (1) At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings by filing a Notice of Motion, 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 Notice of 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.

Chapter 7 - Complaints, Applications and Tribunal Hearings : Part F – Conduct of Tribunal Proceedings

Regulation 160-r162

- (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 before 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.

#### 160. 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 160 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.
- (3) After the summons has been issued, it must be served by the sheriff in any manner authorised by the High Court Rules.
- (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.

#### 161. Witness fees

- (1) A witness in any proceedings before the Tribunal 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.

#### 162. 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 other 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 Rules, 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.

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

Regulation 163-r164

### **Part G— Maximum Administrative Fines and Determination of Turnover**

#### **163. Maximum administrative fines**

*See s. 175*

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

#### **164. Manner of calculating assets and turnover**

*See s. 175 (3) and 223*

- (1) For purposes of S175 of the Act, the assets and turnover of a company at any particular time must be calculated in accordance with—
  - (a) the financial reporting standards applicable to that company, as set out in regulation 27; or
  - (b) SA GAAP, as defined in regulation 26 (1)(f), in the case of a company in respect of which no financial reporting standards have been prescribed.
- (2) At any particular time, the asset value of—
  - (a) a company, other than a holding company, is equal to the gross value of the company's assets as shown on the company's balance sheet in its most recent annual financial statements; or
  - (b) a holding company is equal to the gross value of the consolidated assets of the company and its subsidiaries, as shown on the company's balance sheet in its most recent annual financial statements,adjusted in either case in accordance with sub-regulation (3).
- (3) If, between the date of the most recent annual financial statements and the date at which a calculation of a company's asset value is to be calculated, the company has acquired or divested itself of any subsidiary, or has entered into a joint venture not shown on those statements—
  - (a) the following items must be added to the calculation of the company's asset value, to the extent that any such item would be required to be included in the company's assets on its annual financial statements:
    - (i) the value of each such recently acquired asset; and
    - (ii) any asset received by the company in exchange for a recently divested asset; and
  - (b) the following items may be deducted from the company's asset value, to the extent that any such item was included as an asset on the company's most recent annual financial statements:

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- (i) the value of each such recently divested asset at the date of divestiture; and
    - (ii) any asset that was used by the company to acquire a recently acquired asset.
  - (4) At any particular time, the annual turnover of—
    - (a) a company other than a holding company is the gross revenue of that company from income in, into or from the Republic, arising from the following transactions or events, as recorded on the company's most recent annual financial statements:
      - (i) the sale of goods;
      - (ii) the rendering of services; or
      - (iii) the use by other persons of the company's assets yielding interest, royalties, or dividends; or
    - (b) a holding company is the consolidated gross revenue of that company and each of its subsidiaries from income in, into or from the Republic, arising from the following transactions or events, as recorded on the company's most recent annual financial statements:
      - (i) the sale of goods;
      - (ii) the rendering of services; or
      - (iii) the use by other persons of the company's assets yielding interest, royalties, or dividends,

adjusted in accordance with sub-regulations (5) and (6), in either case.
  - (5) In calculating the annual turnover of a company—
    - (a) any amount contemplated in sub-regulation (4) may be excluded to the extent that it is properly excluded from gross revenue in accordance with the applicable financial reporting standards referred to in sub-regulation (1);
    - (b) taxes, rebates, or similar amounts calculated and paid or to be paid in direct relation to revenue as, for example, sales tax, VAT, excise duties or sales rebates, may be deducted from gross revenue; and
    - (c) gains arising from non-current assets or from foreign currency transactions may be excluded from gross revenue.
  - (6) If, between the date of the most recent annual financial statements and the date at which a calculation of a company's annual turnover is to be calculated, the company has acquired or divested itself of any subsidiary, or entered into a joint venture not shown on those statements—

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

Regulation 164

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- (a) the turnover generated by any such newly acquired asset must be included in the calculation of the company's annual turnover, to the extent that any such item would be required to be included in the company's income statements on its annual financial statements; and
- (b) the turnover generated in the previous financial year by any such newly divested asset may be excluded in the calculation of the company's annual turnover, to the extent that any such item was included in the company's income statements on its most recent annual financial statements.

**Chapter 8 - Regulatory Agencies and Administration****Part A— Regulatory Agency Offices and Functions****165. Office hours and address of regulatory agencies**

- (1) The senior 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, from 08h00 to 15h30, excluding any public holiday established or declared in terms of the Public Holidays Act, 1004 (Act No. 36 of 1994).
- (3) Despite sub-paragraph (2)—
  - (a) in exceptional circumstances a regulatory office may—
    - (i) close to the public if the senior officer considers it necessary to do so in the interests of safety, security, inability to properly perform its functions or other appropriate reason; or
    - (ii) accept documents for filing on any day and at any time; and
  - (b) a regulatory agency 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 7 and 169, 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);
  - (d) Transmitted by electronic mail to an address designated in terms of sub-regulation (1); or
  - (e) Transmitted electronically through the medium of any internet facility maintained by the regulatory agency for that purpose.

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Regulation 166-r168

#### **166. Extension and condonation of time limits**

- (1) The senior officer of a regulatory agency may generally extend any particular time limit set out in the Act or these regulations for filing any document with that agency, to the extent necessary or desirable having regard to the public demand for access to the agency's services, the administrative capacity of the agency to meet that demand, and the interests of efficiency and equality of access.
- (2) On good cause shown, the recording officer of a regulatory agency may condone late performance of an act in respect of which the Act or these regulations prescribe a time limit, other than a time limit that is binding on the regulatory agency itself.

#### **167. Appointment of recording officer and assignment of functions by responsible officer**

The senior 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.

#### **168. Filing documents**

- (1) A regulatory agency—
  - (a) must assign a distinctive number to each document filed for the first time 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 of the Tribunal; and
  - (b) note the distinguishing number on every copy of that document.
- (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.
- (4) The recording officer of a regulatory agency—
- (a) must take reasonable steps to—
    - (i) confirm the identity of any person filing a document with that regulatory agency;
    - (ii) verify that the person filing a document on behalf of, or in relation to a juristic person, has the right to file that document in their own name, or is authorised to file the document on behalf of another person who has the right to file the document;
    - (iii) verify the authenticity of every document being filed;
  - (b) may demand that the person seeking to file a document supply reasonable evidence for the purposes contemplated in paragraph (a); and
  - (c) may reject any document on the grounds that the requirements of paragraph (a), or a demand issued in terms of paragraph (b), have not been satisfied.
- (5) If the Commission has refused to accept a document in terms of sub-regulation (4) (c), the person who was prevented from filing that document may apply to the Tribunal for an order requiring the recording officer to accept the document for filing, and the Tribunal may grant an appropriate order in the circumstances.
- (6) A company may challenge any document filed with the Commission within 10 business days by filing a notice in Form CoR 168.
- (7) A filing that has been challenged in terms of sub-regulation (6) is a nullity and must be removed from the register.

#### **169. Electronic filing and payments**

- (1) The senior 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) If the senior 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;

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

## Regulation 170-r171

- (b) Registration procedures;
  - (c) Form and format of records;
  - (d) Manner and form of payment;
  - (e) Information security requirements; and
  - (f) Record retention requirements.
- (3) At any time, a regulatory agency may suspend or terminate any electronic services contemplated in this regulation.

**170. 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 CR1, CR2 A or B.
- (3) In the case of electronic payment of fees, payment will be deemed to be received by a regulatory agency on the date and at the time that a direct deposit or an electronic transfer of funds or other electronic payment, in the amount of that fee is credited to the account of the regulatory agency at the financial institution to which it is transferred.
- (4) The recording officer of a regulatory agency may not waive or reduce a fee imposed in terms of the Act, except as authorized by the Act or these regulations.
- (5) Subject to regulation 40(3)(b)(ii) and (6), no prescribed fee referred to in regulation 30(1) or (6) which is outstanding due to non-compliance by the company or external company with the requirements of section 33 to file an annual return, will after 6 months from the date on which the annual return was due to be filed, for financial accounting purposes of the Commission be regarded as a debt owing to the Commission.

**171. Panel fees**

- (1) On 1 March each year, the Panel may levy a fee on each company listed on an exchange in the Republic, equal to a percentage, as determined by the Panel in consultation with the Minister, of—
  - (a) the annual listing fee charged by the relevant exchange to each listed entity in accordance with its Listings Requirements; or
  - (b) the initial listing fee charged by the relevant exchange in accordance with its Listings Requirements to a company that is listed during a year and is not charged the annual listing fee.