(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.
Chapter 5 - Fundamental Transactions and Takeover Regulations: Part D—Duties and Conduct of Offeree and Directors

Regulation 107-108

**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.
(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 for 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.
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Regulation 111

(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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Regulation 111

(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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Regulation 112-113

(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.
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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Regulation 116-r118

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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Regulation 120-121

(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 an informal 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.
(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
(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—
(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 (3), 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.

Regulation 125

(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.
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—
Section 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
(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

(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

(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.
Chapter 7 - Complaints, Applications and Tribunal Hearings: Part B—Forms and Notices with respect to certain remedies

Regulation 130-131

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.
Chapter 7 - Complaints, Applications and Tribunal Hearings: Part C—Alternative Dispute Resolution

Regulation 132-134

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

Regulation 135-137

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

Regulation 139

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

Regulation 141—E143

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 144-145

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

Regulation 149

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.
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Regulation 152-155

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;
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Regulation 156

(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 -
(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. Intervenors

(1) At any time after an initiating document is filed with the Tribunal, any person who
has a material interest in the relevant matter may apply to intervene in the Tribunal
proceedings by filing a Notice of Motion, 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.
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(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.
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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:
(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—
(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.
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;
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(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;
(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.
(2) An exchange must provide the necessary information to the Panel to enable it to administer the fees contemplated in sub-regulation (1).

(3) The fees and levies to be paid to the Panel must be published in the Gazette.

(4) Other fees payable to the panel are as set out in Table CR 2A.

172. Regulatory agency notices

(1) A regulatory agency must publish any notice required or contemplated by the Act or these regulations—

(a) in the Gazette, if expressly required to do so by the Act or these regulations; or

(b) on its website, in any other case.

(2) Whenever a regulatory agency is required, either in terms of the Act or these regulations, to publish a notice in the Gazette, that notice must contain at least the following information:

(a) The name of any person directly affected by the notice.

(b) The file number assigned by the regulatory agency to the relevant matter.

(c) The provision of the Act or regulations in terms of which the notice is being issued.

(d) A brief and concise description of the nature of the relevant matter.

(e) If the notice invites submissions, the last date on which submissions may be received.

(f) If the notice reports a decision—

(i) a brief and concise description of the nature of the relevant decision;

(ii) a statement indicating whether reasons for the decision have been published, and if so, how a copy of those reasons may be obtained; and

(iii) a statement of any right of review of, or appeal from, that decision, including the period during which a review or appeal may be lodged.

(g) The name, address and contact numbers of the person in the regulatory agency responsible for publishing the notice.

173. Issuing documents by regulatory agency

If the Act or these regulations require a regulatory agency to issue a document—

(a) the document will have been issued by the regulatory agency when it has been signed, and delivered to any person to whom it is addressed; and
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(b) the document may be signed and delivered at any time of day, despite regulation 165 (2).

174. Content and standards for Commission registers

(1) A regulatory agency must keep any register required in terms of the Act in an official language of the Republic, in a manner sufficient to provide an adequate information base to—

(a) enable the regulatory agency to satisfy all reporting requirements applicable to it, in terms of the Act or any other applicable law;

(b) provide simple and efficient access to the public to information required to exercise any right in terms of the Act, or any other applicable law.

(2) The registers required to be kept by the Act must be kept in such a manner as—

(a) to provide adequate precautions against—

(i) theft, loss or intentional or accidental damage or destruction; and

(ii) falsification; and

(b) to facilitate the discovery and correction of any error or falsification.

(3) If a regulatory agency keeps any register partially or completely in electronic form, the regulatory agency must—

(a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and

(b) ensure that information in the register is capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.

(4) Each regulatory agency may determine the specific form of any register, and the particular manner in which information is recorded in or compiled from any register.

175. Form of Annual Report

The Annual Report to be submitted by a regulatory agency in terms of the Act must be divided into the following Parts:

(a) Statement of Progress, being a statement setting out the progress during the preceding year towards realization of the purposes of the Act, to the extent applicable to the particular regulatory agency.

(b) The Proceedings of the Regulatory Agency, being a summary report of the regulatory agency’s work in relation to its functions.

(c) The External Relations of the Regulatory Agency, being a summary report on the following matters:
(i) The regulatory agency’s public awareness programs.

(ii) Relationships between the regulatory agency and other regulatory authorities.

(iii) Relationships between the regulatory agency and foreign agencies.

(iv) Research activities undertaken by the regulatory agency and any proposals for law reform published by the regulatory agency.

(d) The Administrative Activities of the Regulatory Agency, being a summary report concerning the regulatory agency’s management, staff, infrastructure, and related matters.

(e) The Regulatory Agency’s Finances, including any information required in terms of the Public Finance Management Act.
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Part B - Access to Regulatory Agency Information and Records

176. Restricted information

(1) The provisions of this Part are subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the provisions of that Act prevail in the case of a conflict between any such provisions and any provision of this Part.

(2) For the purpose of this Part, the following five classes of information are restricted:

(a) Information that has been determined to be confidential information in terms of section 212;

(b) Identity of a complainant, in the following circumstances:

   (i) A person who provides information in terms of section 159 may request that the Commission or Panel treat their identity as restricted information; but that person may be a complainant in the relevant matter only if they subsequently waive the request in writing.

   (ii) If a person has requested in terms of sub-paragraph (i) that the Commission or Panel treat their identity as restricted information—

       (aa) The Commission or Panel must accept that request; and

       (bb) That information is restricted unless the person subsequently waives the request in writing.

(c) Information that has been received by the Commission or Panel in a particular matter, other than that referred to in paragraphs (a) and (b), as follows:

   (i) The description of conduct attached to a complaint, and any other information received by the Commission or Panel during its investigation of the complaint, is restricted information until the Commission or Panel issues a referral or notice of non-referral in respect of that complaint, but a completed Form CoR 135.1 is not restricted information.

(d) A document—

   (i) that contains—

       (aa) an internal communication between officials of a regulatory agency, or between one or more such officials and their advisors;

       (bb) an opinion, advice, report or recommendation obtained or prepared by or for a regulatory agency;

       (cc) an account of a consultation, discussion or deliberation that has occurred, including, but not limited to, minutes of a meeting, for the purpose of assisting to formulate a policy or take a decision in
the exercise of a power or performance of a duty conferred or imposed on a regulatory agency by law; or
(ii) the disclosure of which could reasonably be expected to frustrate the deliberative process of a regulatory agency by inhibiting the candid-

(aa) communication of an opinion, advice, report or recommendation; or

(bb) conduct of a consultation, discussion or deliberation; or

(iii) the disclosure of which could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

(e) Any other document to which a public body would be required or entitled to restrict access in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

177. Access to information

(1) Any person, upon payment of the prescribed fee, may inspect or copy any record of a regulatory agency—

(a) if it is not restricted information; or

(b) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by—

(i) this regulation; or

(ii) an order of the Tribunal, or a Court.

(2) In a particular complaint, the Commission or Panel may release otherwise restricted information, other than confidential information, relating to a possible agreement of terms of an appropriate order, or the consent of a complainant for an order to include an award of damages, to—

(a) The respondent; or

(b) Any person who, in signing Form CoR 138 in respect of that complaint, has consented to the inclusion of an order of damages in a consent order, as contemplated in regulation 138 (3).

(3) In addition to the provisions of sub-regulation (1) and (2), a regulatory agency may release restricted information to, or permit access to it by, only the following persons:

(a) the person who provided that information to the regulatory agency;

(b) the person to whom the confidential information belongs;

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(c) a person who requires it for a purpose mentioned in the Act; or

(d) any other person, with the written consent of the person to whom the information belongs.

(4) When a regulatory agency submits a Complaint Referral to the Tribunal, or supplies any other information to the Tribunal, or the Minister, the regulatory agency must identify any information included in its submission—

(a) in respect of which a claim has been made in terms of Section 212 that has not yet been determined by the Tribunal; or

(b) that has been finally determined to be confidential information.
Chapter 8 - Regulatory Agencies and Administration: Part C—Exercise of Commission Exemption Functions

Regulation 178 to 179

Part C—Exercise of Commission Exemption Functions

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

(1) In this Part, ‘requester’ means a person who has requested the Minister to grant an exemption in terms of section 9 (2).

(2) Upon receiving a request for advice respecting a proposed exemption, referred by the Minister in terms of section 9 (3), the Commission, by issuing Form CoR 178 to the requester, may require the requester to provide the necessary particulars before the request will be considered, if the application does not specify sufficient particulars of—

(a) the specific company or categories of state owned companies for whom the exemption is sought;

(b) the specific provisions of the Act from which exemption is sought; or

(c) the specific relevant alternative legislation contemplated in section 9 (2).

(3) If the requester—

(a) does not respond to the Commission within 40 business days after receiving Form CoR 178, the request will be deemed to have been abandoned; or

(b) responds to the Commission, but does not, to the satisfaction of the Commission, meet the requirements set out in Form CoR 178 as issued, the Commission, by issuing a new Form CoR 178 to the requester, may again stipulate any further information, or clarification, required before the application will be considered, and the provisions of this sub-regulation (3) apply afresh to any such new Form CoR 178.

(4) If a request is deemed to have been abandoned in terms of sub-regulation (3), the Commission may close its file on that application by giving notice of that fact to the Minister, but without providing any further advice to the Minister as contemplated in section 9 (3).

(5) After receiving adequate information to begin consideration of a request, the Commission—

(a) must publish in the Gazette the notice of the request; and

(b) may request further information from any person who submits a representation in response to a notice published in terms of paragraph (a).

179. Procedures related to withdrawing exemptions

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

(2) The Commission—
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(a) must monitor any national legislation that forms the basis on which an exemption is granted in terms of section 9 (2); and

(b) may recommend to the Minister that an exemption be withdrawn if the national legislation contemplated in section 9 (2), and on the basis of which the exemption was granted, has subsequently been amended or repealed to the extent that the grounds for the exemption no longer exist.

(3) If the Commission is contemplating making a recommendation to the Minister in terms of sub-regulation (2)(b), the Commission must so notify the Minister, the Minister of Public Enterprises, or the Minister responsible for Local Government Affairs, as the case may require, and the company concerned, in writing, of the possible intention to do so, as well as publishing a notice of that intention in the Gazette.

(4) The Commission may request further information from a person who submits a representation in response to a notice published in terms of sub-regulation (3).

(5) After considering any submissions or other information received in relation to the proposed withdrawal of exemption, the Commission must advise the Minister whether or not to withdraw the exemption.
Annexure 1

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

(1) For ease of reference, the Form number corresponds with the number of the relevant regulation.

(2) Whenever a document is required—
   (a) in terms of a section of the Act or a provision of these regulations as listed in column 1 of this Table; and
   (b) for a purpose listed in column 2,

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

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<th>1 Authority</th>
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<tbody>
<tr>
<td>S. 12 (1) R. 9</td>
<td>Application to reserve a company name</td>
<td>CoR 9.1</td>
<td>Must be accompanied by a filing fee of R75 if filed manually, or R50 if filed electronically; and any relevant documentation or evidence required in terms of regulation 8.</td>
</tr>
<tr>
<td>S. 12 (4) R. 9</td>
<td>Application for extension of name reservation</td>
<td>CoR 9.2</td>
<td>Must be accompanied by filing fee of R50 if filed manually, or R30 if filed electronically; and a statement required by in regulation 9 (2)(b), and evidence required by regulation 9 (2)(c), if applicable.</td>
</tr>
<tr>
<td>R 9 (3)(a)</td>
<td>Notice requiring further particulars in respect of name reservation, issued by the Commission</td>
<td>CoR 9.3</td>
<td></td>
</tr>
<tr>
<td>R. 9 (3)(b)</td>
<td>Confirming notice of name reservation, issued by the Commission</td>
<td>Cor 9.4</td>
<td></td>
</tr>
<tr>
<td>R. 9 (3)(c)</td>
<td>Notice refusing name reservation or defensive registration, issued by the Commission</td>
<td>CoR 9.5</td>
<td></td>
</tr>
<tr>
<td>S. 12 (3)(a) R. 9 (4)(a)</td>
<td>Notice of potentially contested name, issued by the Commission</td>
<td>CoR 9.6</td>
<td></td>
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</table>
### COMPANIES REGULATIONS, 2011

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<tr>
<td>S. 12 (3)(b) R. 9 (4)(b)</td>
<td>Notice of potentially offensive name, issued by Commission</td>
<td>CoR 9.7</td>
<td>Must be accompanied by a filing fee of R250 if filed manually, or R200 if filed electronically, and evidence of a direct and material interest in the name.</td>
</tr>
<tr>
<td>S. 12 (9) R. 10(1)</td>
<td>Application for Defensive Name Registration</td>
<td>CoR 10.1</td>
<td>Must be accompanied by a filing fee of R50 if filed manually, or R30 if filed electronically, and evidence of a direct and material interest in the name.</td>
</tr>
<tr>
<td>S. 12 (9) R. 10 (2)</td>
<td>Application for Renewal of Defensive Name Registration</td>
<td>CoR 10.2</td>
<td>Must be accompanied by a filing fee of R100 if filed manually, or R75 if filed electronically, and evidence as required by regulation 11 (1)(b).</td>
</tr>
<tr>
<td>S. 12 (5) R. 11</td>
<td>Application to transfer reserved or defensive name</td>
<td>CoR 11.1</td>
<td>Must be accompanied by a filing fee of R100 if filed manually, or R75 if filed electronically, and evidence as required by regulation 11 (1)(b).</td>
</tr>
<tr>
<td>S. 12 (5) R. 11</td>
<td>Notice refusing name transfer, issued by the Commission</td>
<td>CoR 11.2</td>
<td></td>
</tr>
<tr>
<td>S. 12 (6) R. 12</td>
<td>Notice alleging reservation system abuse, issued by the Commission</td>
<td>CoR 12.1</td>
<td></td>
</tr>
</tbody>
</table>
| S. 13 (2) R. 14          | Notice of Incorporation                                                         | CoR 14.1 | Payment of a filing fee, subject to a credit—  
(a) for any amount previously paid to reserve the company’s name; or  
(b) of an amount equal to the fee for name reservation, if the company has chosen to be known by its registration number alone.  
Must have Memorandum of Incorporation attached.  
Refer to Annexure 2, Table CR 2B for Incorporation fees. |
### Table 1

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<tr>
<td>S. 13 (4) R. 14 (5)</td>
<td>Notice rejecting a Notice of Incorporation, issued by the Commission</td>
<td>CoR 14.2</td>
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<tr>
<td>S. 14 (1)(b) R. 14 (6)</td>
<td>Registration Certificate</td>
<td>CoR 14.3</td>
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</tr>
<tr>
<td>S. 13 (1)(a) R. 15 (1)</td>
<td>Standard Form Memorandum of Incorporation</td>
<td>CoR 15.1</td>
<td>Refer to Annexure 2, Table CR 2B for Incorporation fees. May be in any of Form A, B, C, D or E as allowed by regulation 15 (1)</td>
</tr>
<tr>
<td>S. 16 (1)(b) R. 15 (2)</td>
<td>Notice of Amendment to the Memorandum of Incorporation</td>
<td>CoR 15.2</td>
<td>Payment of a filing fee, unless it is the first such filing by a pre-existing company, as contemplated in Schedule 5, item 4 (2). Must be accompanied by either the Special Resolution of the company setting out- a) the amendment to the Memorandum of Incorporation, or b) a copy of the complete Memorandum of Incorporation, as amended. Payment of a filing fee of R250.</td>
</tr>
<tr>
<td>17 (1)(a) R. 15 (5)</td>
<td>Notice of Alteration of Memorandum of Incorporation</td>
<td>CoR 15.3</td>
<td>Payment of filing fee of R250.</td>
</tr>
<tr>
<td>s. 17 (4) R. 15 (6)</td>
<td>Notice of Translation of Memorandum of Incorporation</td>
<td>CoR 15.4</td>
<td>Payment of a filing fee of R250. Must be accompanied by a copy of the translated Memorandum of Incorporation, and a sworn statement, as required by section 17 (4).</td>
</tr>
<tr>
<td>Authority</td>
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<td>3 Form</td>
<td>4 Conditions</td>
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<tr>
<td>S. 17 (6) R. 15 (7)</td>
<td>Notice of Consolidation of Memorandum of Incorporation</td>
<td>CoR 15.5</td>
<td>Payment of R 250 fee. Must be accompanied by the consolidated revision of the Memorandum of incorporation, together with a sworn statement, or a statement of an attorney or notary public, as required by section 17(5).</td>
</tr>
<tr>
<td>S. 17 R. 15 (8)</td>
<td>Notice to consolidate the Memorandum of Incorporation, to be issued by Commission</td>
<td>CoR 15.6</td>
<td></td>
</tr>
<tr>
<td>S. 15 (3)-(5) R. 16 (1)</td>
<td>Notice concerning company rules</td>
<td>CoR 16.1</td>
<td>Payment of a filing fee of R100.</td>
</tr>
<tr>
<td>S. 15 (3)-(5) R. 16 (2)</td>
<td>Notice of result of vote on company rules</td>
<td>CoR 16.2</td>
<td>Payment of a filing fee of R100.</td>
</tr>
<tr>
<td>S. 13 (5) R. 17</td>
<td>Application to transfer registration of foreign company</td>
<td>CoR 17.1</td>
<td>Must be accompanied by R 400 fee and all materials listed in regulation 17.</td>
</tr>
<tr>
<td>S. 13 (6)-(7) R. 17 (2)</td>
<td>Notice requiring further particulars of foreign company</td>
<td>CoR 17.2</td>
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</tr>
<tr>
<td>S. 13 (6)-(7) R. 17 (2)</td>
<td>Registration Certificate of domesticated company</td>
<td>CoR 17.3</td>
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</tr>
<tr>
<td>S. 13 (6)-(7) R. 17 (3)</td>
<td>Notice of Refusal to transfer registration of a foreign company</td>
<td>CoR 17.4</td>
<td></td>
</tr>
<tr>
<td>Schedule 2 R. 18</td>
<td>Application to convert a close corporation</td>
<td>CoR 18.1</td>
<td>Must be accompanied by a filing fee, the Memorandum of incorporation, and the consents required by regulation 18(1)(a). Refer to Annexure 2, Table CR 28 for fees related to Incorporation.</td>
</tr>
<tr>
<td>Schedule 2 R. 18</td>
<td>Notice Requiring Further Particulars of conversion of close corporation</td>
<td>CoR 18.2</td>
<td></td>
</tr>
<tr>
<td>Schedule 2 R. 18</td>
<td>Registration Certificate</td>
<td>CoR 18.3</td>
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</tr>
<tr>
<td>S. 22 R. 19</td>
<td>Notice to show cause regarding reckless trading or trading under insolvent circumstances, to be issued by the Commission</td>
<td>CoR 19.1</td>
<td></td>
</tr>
<tr>
<td>S. 22 R. 19</td>
<td>Confirmation notice</td>
<td>CoR 19.2</td>
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</tr>
<tr>
<td>S.23 (3) R.20</td>
<td>Notice of Registration of External Company</td>
<td>CoR 20.1</td>
<td>Payment of R 400 filing fee. Must be accompanied by a copy of the certificate of registration or comparable document issued by the jurisdiction within which the company was incorporated, and other items required by regulation 20.</td>
</tr>
<tr>
<td>S. 23 R.20</td>
<td>Registration certificate of External Company</td>
<td>CoR 20.2</td>
<td></td>
</tr>
<tr>
<td>S. 23 (3)(ii) R.21</td>
<td>Notice of change of Registered Office</td>
<td>CoR 21.1</td>
<td>The prescribed fee is Nil.</td>
</tr>
<tr>
<td>S23 R.20</td>
<td>Notice of change of particulars of person to accept service</td>
<td>CoR 21.2</td>
<td>The prescribed fee is Nil</td>
</tr>
<tr>
<td>S. 25 R.22</td>
<td>Notice of Location of Company records</td>
<td>CoR 22</td>
<td>To be filed only if company records are not kept at its registered office.</td>
</tr>
<tr>
<td>S. 26 R.24</td>
<td>Request for Access to company information</td>
<td>CoR 24</td>
<td></td>
</tr>
<tr>
<td>S. 33 R.30</td>
<td>Annual return</td>
<td>CoR 30.1</td>
<td>Refer to Annexure 2, Table CR 2B for fees related to Annual Returns.</td>
</tr>
<tr>
<td>S. 33 R.30 (4)</td>
<td>Financial Accountability Supplement to Annual Return</td>
<td>CoR 30.2</td>
<td>To be filed only by companies that do not file audited or independently reviewed annual financial statements</td>
</tr>
<tr>
<td>S. 33 R.30 (7)</td>
<td>Annual return for External companies</td>
<td>CoR 30.3</td>
<td>Refer to Annexure 2, Table CR 2B for fees related to Annual Returns</td>
</tr>
<tr>
<td>Schedule 5 Item 6 R.31</td>
<td>Notice of Board Resolution to convert par value shares</td>
<td>CoR 31</td>
<td>No fee to be charged</td>
</tr>
<tr>
<td>S. 21 R.35</td>
<td>Notice of Pre-incorporation contract</td>
<td>CoR 35.1</td>
<td></td>
</tr>
<tr>
<td>S. 21 R.35</td>
<td>Notice of action concerning Pre-Incorporation contract</td>
<td>CoR 35.2</td>
<td></td>
</tr>
<tr>
<td>Various sections R.36</td>
<td>General security holder notice to company and proxy form</td>
<td>CoR 36.1</td>
<td>Not to be filed with commission</td>
</tr>
<tr>
<td>Various section R.36</td>
<td>General company notice to security holders</td>
<td>CoR 36.2</td>
<td>Not to be filed with commission</td>
</tr>
<tr>
<td>R.36 (3)</td>
<td>General company notice to holders of beneficial interest</td>
<td>CoR 36.3</td>
<td>Not to be filed with commission</td>
</tr>
<tr>
<td>Authority</td>
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<td>Conditions</td>
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<tr>
<td>S. 75 R. 36</td>
<td>Notice of directors personal financial interest</td>
<td>CoR 36.4</td>
<td>Not to be filed with commission</td>
</tr>
<tr>
<td>S. 70 (6) R. 39</td>
<td>Notice of Change of company and external company Directors</td>
<td>CoR 39</td>
<td>Prescribed fee is Nil.</td>
</tr>
<tr>
<td>S. 80 to 82 R. 40</td>
<td>Notice of special resolution to wind up solvent company</td>
<td>CoR 40.1</td>
<td>Payment of R250 filing fee.</td>
</tr>
<tr>
<td>S. 80 to 82 R. 40</td>
<td>Notice of foreign registration of company</td>
<td>CoR 40.2</td>
<td>Payment of R250 filing fee.</td>
</tr>
<tr>
<td>S. 80 to 82 R. 40</td>
<td>Demand notice concerning inactive company or external company, to be issued by Commission</td>
<td>CoR 40.3</td>
<td></td>
</tr>
<tr>
<td>S. 80 to 82 R. 40</td>
<td>Notice of pending de-registration of company or external company, to be issued by Commission</td>
<td>CoR 40.4</td>
<td></td>
</tr>
<tr>
<td>S. 80 to 82 R. 40</td>
<td>Application for re-instatement of de-registered company or external company</td>
<td>CoR 40.5</td>
<td>Payment of R200 fee.</td>
</tr>
<tr>
<td>S. 84 (6), R. 50(12) R. 44</td>
<td>Notice of change of auditor or company officials</td>
<td>CoR 44</td>
<td></td>
</tr>
<tr>
<td>s. 97 (2) R. 46</td>
<td>Notice of Employee Share Scheme</td>
<td>CoR 46.1</td>
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</tr>
<tr>
<td>s. 97 (2) R. 46</td>
<td>Annual certificate of Employee Shares Scheme</td>
<td>CoR 46.2</td>
<td></td>
</tr>
<tr>
<td>s. 99 (7) R. 46</td>
<td>Application concerning rights offer exclusion</td>
<td>CoR 46.3</td>
<td>Payment of R 100 filing fee.</td>
</tr>
<tr>
<td>s. 99 R. 46</td>
<td>Registration of Prospectus or Letter of Allocation</td>
<td>CoR 46.4</td>
<td>Must have prospectus appended Refer to Annexure 2, Table CR 2B for fees.</td>
</tr>
<tr>
<td>s. 99 R. 46</td>
<td>Registration Certificate of Prospectus or Letter of Allocation</td>
<td>CoR 46.5</td>
<td></td>
</tr>
<tr>
<td>s. 99 R. 46</td>
<td>Application to exclude information from Prospectus</td>
<td>CoR 46.6</td>
<td>Payment of R 300 filing fee.</td>
</tr>
<tr>
<td>S.116 (3) R 89</td>
<td>Notice of Amalgamation or Merger</td>
<td>CoR 89</td>
<td>Payment of R 250 filing fee, plus ancillary fees for any registration of new company, or de-registration of existing company.</td>
</tr>
<tr>
<td>Authority</td>
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<tr>
<td>R 84</td>
<td>Declaration of coming into or out of concert</td>
<td>TRP 84</td>
<td>To be filed with the Panel</td>
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<tr>
<td>R 98</td>
<td>Notice of disclosure of dealings in securities</td>
<td>TRP 98</td>
<td>To be filed with the Panel</td>
</tr>
<tr>
<td>S 122 (1) R 121</td>
<td>Notice of disclosure of acquisition or disposal of securities</td>
<td>TRP 121.1</td>
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<tr>
<td>S 122 (3) R 121</td>
<td>Notice of acquisition or disposal of securities</td>
<td>TRP 121.2</td>
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<tr>
<td>S. 129, 131 R. 123</td>
<td>Notice of beginning of Business Rescue Proceedings</td>
<td>CoR 123.1</td>
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<tr>
<td>S. 129 (7) R. 123 (3)</td>
<td>Notice of appointment of Business Rescue Practitioner</td>
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<tr>
<td>S. 129 (7) R. 123 (5)</td>
<td>Notice of decision not to begin business rescue proceedings</td>
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<td>S. 132, 141 R. 125</td>
<td>Notice of Business Rescue Status</td>
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<td>125 (4)</td>
<td>Notice of Termination of Business Rescue Proceedings</td>
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<tr>
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<td>Notice of Substantial Implementation of a Business Rescue Plan</td>
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<tr>
<td>S. 138 R. 126</td>
<td>Application for Business Rescue Practitioners licence</td>
<td>CoR 126.1</td>
<td>Payment of R 500 application fee</td>
</tr>
<tr>
<td>S. 138 R. 126</td>
<td>Certificate of Business Rescue Practitioner License</td>
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Chapter 8 - Regulatory Agencies and Administration: Table CR 1 - Prescribed Forms

Regulation 179

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<td>S 166 R 132</td>
<td>Referral for ADR</td>
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<td>S 166 R 132</td>
<td>Certificate of failed ADR</td>
<td>CTR 132.3</td>
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<tr>
<td>s. 166 R 134</td>
<td>Application for accreditation (as ADR provider)</td>
<td>CoR 134.1</td>
<td>Payment of R 500 application fee.</td>
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<tr>
<td>s. 166 R 134</td>
<td>Registration certificate as ADR provider</td>
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<td>s. 168 R 135</td>
<td>Complaint to Commission</td>
<td>CoR 135.1</td>
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<td>s. 169 R 135</td>
<td>Commission Notice of Non-Investigation</td>
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<td>R 137</td>
<td>Commission Notice to Investigate</td>
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<td>Commission request for additional information</td>
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<tr>
<td>R 137</td>
<td>Commission Demand for corrected information</td>
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<td>R 139</td>
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<td>R 139</td>
<td>Compliance Certificate</td>
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<td>R 140</td>
<td>Referral by Commission or Panel to another regulator</td>
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<td>Commission referral to Tribunal</td>
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<td>Application to Tribunal</td>
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<td>Notice of Motion</td>
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<td>CTR 147</td>
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<td>R 148</td>
<td>Notice of Withdrawal</td>
<td>CTR 148</td>
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<td>R 151</td>
<td>Tribunal Notice of Hearing</td>
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Annexure 2: Table CR 2A—Panel Fee Schedule

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<td>R 168 (6)</td>
<td>Notice challenging filed information</td>
<td>CTR 168</td>
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<tr>
<td>s. 9 R 188</td>
<td>Request for particulars regarding requested exemption</td>
<td>CoR 178</td>
<td></td>
</tr>
</tbody>
</table>

Annexure 2

Table CR 2A—Panel Fee Schedule
(in terms of Regulations 122, 155, 170 and 171)

1. The fees chargeable (inclusive of VAT) for the several categories of service rendered by the Panel, and referred to in regulation 122 (1) are as follows:
   (a) No fees will be charged for services under regulation 122 (1)(a).
   (b) Services under regulation 122 (1)(b) will be charged at the rate of R1 710 per billable hour of work or part thereof.
   (c) Services under regulation 122 (1)(c) will be charged at the rate of R3 420 per billable hour of work or part thereof.
   (d) Services under regulation 122 (1)(d), including a circular dealing with a waiver, payable upon first submission of documentation for which a VAT invoice will be issued by the Panel, will depend on the value of the offer, being the consideration payable for acquiring, merging or amalgamating the securities or assets/undertaking of each/all offeree regulated company/ies involved, and will be charged according to the scale set out below:

<table>
<thead>
<tr>
<th>Consideration value of affected transaction (R million)</th>
<th>Fee including VAT (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 50</td>
<td>57 000</td>
</tr>
<tr>
<td>Over 50 to 100</td>
<td>85 500</td>
</tr>
<tr>
<td>Over 100 to 250</td>
<td>114 000</td>
</tr>
<tr>
<td>Over 250 to 500</td>
<td>142 500</td>
</tr>
<tr>
<td>Over 500 to 1 000</td>
<td>171 000</td>
</tr>
<tr>
<td>Over 1 000 to 10 000</td>
<td>228 000</td>
</tr>
<tr>
<td>Over 10 000</td>
<td>285 000</td>
</tr>
</tbody>
</table>

2. Fees to be levied by the Panel in terms of regulation 171 will be as published from time to time in the Gazette.
Annexure 2: Table CR 2B—Commission Fee Schedule

Regulation 179

**Table CR 2B—Commission Fee Schedule**
* (in terms of Regulation 170)

1. Except as set out below, the fee for filing any particular document with the Commission is as set out in Annexure 1, with respect to that document.

2. The fee for filing a **Notice of Incorporation** of a company varies, depending on the form of the company's attached Memorandum of Incorporation, as follows:
   (a) If the Memorandum is in Form 15.1 A or 15.1 C, the filing fee is R 175, subject to any reduction allowed in terms of regulation 14 (2).
   (b) In any other case, the filing fee is R 475, subject to any reduction allowed in terms of regulation 14 (2).

3. The fee for filing a **Notice of Conversion** of a close corporation to a company is—
   (a) Nil, if filed within three years after the effective date, and the current name of the close corporation is retained as the name of the company; or
   (b) the same as filing a Notice of Incorporation, in any other case.

4. The fee for filing a **Notice of Amendment of the Memorandum of Incorporation**, with the special resolution and amendment attached, subject to any fee exemption set out in a particular regulation, is R 250, in any other case.

5. The fee for filing any special resolution not otherwise addressed in Annexure 1 or this Table, is R 80.

6. The fee for filing a **Prospectus to be registered** is R 5000 for each day or part thereof.

7. The fee for filing a letter of allocation is R 100.

8. The fee for filing an annual return varies according to the company or external company turnover, and time of filing, as set out below:

<table>
<thead>
<tr>
<th>Annual Turnover</th>
<th>Filing within 30 business days after anniversary</th>
<th>Filing more than 30 business days after anniversary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than R 1 Million</td>
<td>R 100</td>
<td>R 150</td>
</tr>
<tr>
<td>At least R 1 Million, but less than R 10 Million</td>
<td>R 450</td>
<td>R 600</td>
</tr>
<tr>
<td>At least R 10 Million, but less than R 25 Million</td>
<td>R 2000</td>
<td>R 2500</td>
</tr>
<tr>
<td>R 25 Million or more</td>
<td>R 3000</td>
<td>R 4000</td>
</tr>
</tbody>
</table>
9. The Commission may perform the ancillary services, and charge the fees, set out below:

<table>
<thead>
<tr>
<th>Service to be provided</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vetting a draft of a proposed amendment to the Memorandum of Incorporation</td>
<td>R 150</td>
</tr>
<tr>
<td>Vetting a draft prospectus</td>
<td>R 2000</td>
</tr>
<tr>
<td>Issuing an electronic certificate</td>
<td>R 30</td>
</tr>
<tr>
<td>Allowing inspection of a company file</td>
<td>R 100</td>
</tr>
<tr>
<td>Certifying a copy of a document on file</td>
<td>R 20</td>
</tr>
<tr>
<td>Issuing a certificate relating to company information</td>
<td>R 50</td>
</tr>
<tr>
<td>Providing photocopies of documents</td>
<td>R 1.50 per page</td>
</tr>
<tr>
<td>Providing data extracts and reports of standard information on the registry, in electronic form.</td>
<td>R 10, plus R .04 per record</td>
</tr>
<tr>
<td>Providing data extracts and reports of standard information on the registry, in paper form, to a maximum of 500 records.</td>
<td>R 10, plus R .04 per record</td>
</tr>
</tbody>
</table>

10. For the purpose of Item 9, the fee for a data extract and report will be based on the following rules:

(a) Basic company information constitutes a single record.

(b) Information concerning directors or auditors, constitutes a single record per director or auditor.

(c) A request for a paper report that exceeds 500 records will be divided, with every 500 record increment, or part thereof, constituting a separate request.
Annexure 3: Table CR 3—Methods and Times for Delivery of Documents

Regulation 179

Annexure 3

Table CR 3—Methods and Times for Delivery of Documents

(in terms of Regulation 7)

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

Subject to regulation 7 (2)(b), a document delivered by a method listed in the second column of this Table will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table.

<table>
<thead>
<tr>
<th>Nature of Person to whom the document is to be delivered</th>
<th>Method of Delivery</th>
<th>Date and Time of Deemed delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANY PERSON</td>
<td>By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or By sending the notice or a certified copy of the document by registered post to the person's last-known address; or By any other means authorised by the High Court; or By any other method allowed for that person in terms of the following rows of this Table.</td>
<td>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time. On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time. On the 7th day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day. In accordance with the order of the High Court. As provided for that method of delivery.</td>
</tr>
</tbody>
</table>
### Annexure 3: Table CR 3—Methods and Times for Delivery of Documents

#### Regulation 179

<table>
<thead>
<tr>
<th>Nature of Person to whom the document is to be delivered</th>
<th>Method of Delivery</th>
<th>Date and Time of Deemed delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANY NATURAL PERSON</td>
<td>By handing the notice or a certified copy of the document to the person, or to any representative authorised in writing to accept service on behalf of the person; or&lt;br&gt;By leaving the notice or a certified copy of the document at the person’s place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time; or&lt;br&gt;By leaving the notice or a certified copy of the document at the person’s place of employment with any person who is apparently at least 16 years old and apparently in authority.</td>
<td>On the date and at the time recorded on a receipt for the delivery. On the date and at the time recorded on a receipt for the delivery. On the date and at the time recorded on a receipt for the delivery.</td>
</tr>
<tr>
<td>THE TRIBUNAL</td>
<td>By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Tribunal, if the document is a prescribed form; or&lt;br&gt;By transmitting the document as a separate file attached to an electronic mail message addressed to the recording officer of the Tribunal; or&lt;br&gt;By sending a computer disk containing the document in electronic form, by registered post addressed to the recording officer of the Tribunal; or&lt;br&gt;By handing the document, or a computer disk containing the document in electronic form, to the recording officer of the Tribunal.</td>
<td>On the date and at the time recorded by the Tribunal’s computer system, as verified by fax reply to the sender of the information. On the date and at the time recorded by the Tribunal’s computer system, unless, within 1 business day after that date, the recording officer advises the sender that the file is unreadable. On the date and at the time of delivery of the registered post to the recording officer of the Tribunal, as recorded by the post office, unless, within 1 business day after that date, the recording officer advises the sender that the disk is unreadable. On the date and at the time noted in a receipt issued by the recording officer of the Tribunal unless, the document is on a computer disk, and, within 1 business day after that date, the recording officer advises the sender that the disk is unreadable.</td>
</tr>
</tbody>
</table>
Annexure 3: Table CR 3—Methods and Times for Delivery of Documents

Regulation 179

<table>
<thead>
<tr>
<th>to be delivered</th>
<th>The Commission</th>
<th>A company or similar body corporate</th>
<th>The State or a Province</th>
<th>A municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Commission, if the document is a prescribed form; or</td>
<td>On the date and at the time recorded by the Commission’s computer system, as verified by fax reply to the sender of the information.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
</tr>
<tr>
<td></td>
<td>By transmitting the document as a separate file attached to an electronic mail message addressed to the Commission; or</td>
<td>On the date and at the time recorded by the Commission’s computer system, unless, within 1 business day after that date, the Commission advises the sender that the file is unreadable.</td>
<td>On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
</tr>
<tr>
<td></td>
<td>By sending a computer disk containing the document in electronic form, by registered post addressed to the Commission; or</td>
<td>On the date and at the time of delivery of the registered post to the Commission, as recorded by the post office, unless, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>By handing the document, or a computer disk containing the document in electronic form, to the Commission, or a responsible employee who is apparently in charge of the Commission’s office.</td>
<td>On the date and at the time noted in a receipt issued by the Commission unless, the document is on a computer disk, and, within 1 business day after that date, the Commission advises the sender that the disk is unreadable.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A COMPANY OR SIMILAR BODY CORPORATE</td>
<td>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic; or</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>THE STATE OR A PROVINCE</td>
<td>By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nature of Person to whom the document is to be delivered</td>
<td>Method of Delivery</td>
<td>Date and Time of Deemed delivery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A TRADE UNION</strong></td>
<td>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union or for the purposes of section 13(2), if there is a union office within the magisterial district of the firm required to notify its employees in terms of these regulations, at that office. If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>EMPLOYEES OF FIRM</strong></td>
<td>By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.</td>
<td>On the date and at the time sworn to by affidavit of the person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A PARTNERSHIP, FIRM OR ASSOCIATION</strong></td>
<td>By handing the notice or a certified copy of the document to a person who is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of the partnership, firm or association; or If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A STATUTORY BODY OTHER THAN THE COMMISSION AND TRIBUNAL</strong></td>
<td>By handing the notice or a certified copy of the document to the secretary or similar officer or member of the board or committee of that body, or any person acting on behalf of that body.</td>
<td>On the date and at the time recorded on a receipt for the delivery.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Form CoR 9.1

Application to Reserve a Name

Applicant: __________________________
Customer code: ______________________

(Name, identity or registration number, and address of Applicant)

The Applicant applies in terms of section 12 of the Companies Act, 2008 to reserve the first eligible name from among the following:

Insert the proposed name or names to be considered in order for reservation

1) ______________________________________
2) ______________________________________
3) ______________________________________
4) ______________________________________

1. Does any proposed name -
   (a) include any word in a language that is not an official language of the Republic? [ ] Yes [ ] No

   (b) include any word, number or other element that constitutes a registered trade mark, mark in respect of which an application for registration has been filed in the Republic, or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993? [ ] Yes [ ] No

   (c) fall within the category of names restricted in terms of section 11(2)(c) of the Companies Act, or regulation 8(5)? [ ] Yes [ ] No

2. Is any proposed name similar to that of another company, close corporation or co-operative? [ ] Yes [ ] No

If the answer to any question above is "Yes", please attach a separate sheet setting out the information or satisfactory evidence required by Regulation 8(3) to (6), as applicable, with respect to each name.

I declare that the information in this application is true. If I am not the applicant, I declare that the Applicant has authorised me to make this application.

Signature ___________________________ Date ___________________________

For Commission Use Only: Commission file number: __________________ Date filed: ___________________
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA

Form CoR 9.2

Application to Extend a Name Reservation

Applicant: __________________________________________________________________________

Customer code: ______________________________________________________________________

(Name, identity or registration number, and address of Applicant):
___________________________________________________________________________________
___________________________________________________________________________________
___________________________________________________________________________________
___________________________________________________________________________________

The Applicant applies to extend the reservation of the following name in terms of s. 12 (4) of the Companies Act, 2008:

[Insert the reserved name, and the reservation number, as shown on Form CoR 9.4]

Reserved name: ____________________________________________________________
Reservation number: _______________________________________________________

I declare that the information in this application is true. If I am not the applicant, I declare that the Applicant has authorised me to make this application.

Signature __________________________________________ Date ________________________

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa
Postal Address: PO BOX 429
Pretoria 0001
Republic of South Africa
tel: 0861 543 384

www.cipc.co.za
Notice CoR 9.3

Notice Requiring Further Particulars in respect of Name Reservation

About this Notice

• This notice is issued in terms of Regulation 9, 10, 11 or 14 of the Companies Regulations, 2011.

• The Commission will not proceed to consider the application in this matter further until the Applicant has provided the information required by this Notice.

• There is no fee for filing the information required by this Notice.

Concerning:

{Name, address and file number of Application:}
Name: ____________________________
Address: ____________________________
File number: ________________________

In order to complete its consideration of the application identified above, the Commission requires the Applicant to provide the following additional information:

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO box 429
Pretoria 0001
Republic of South Africa
tel: 0861 843 384

www.cipc.co.za

Name and Title of person signing on behalf of the Commission:

Authorised Signature: ____________________________
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA

Notice CoR 9.4 Confirmation Notice of Name Reservation

About this Notice

- This notice is issued in terms of Regulation 9, 10 or 11 of the Companies Regulations, 2011.

- In terms of sections 12 (3) (b), and 160 of the Companies Act, 2008, any person with an interest in the use of the reserved name, or registered defensive name, as set out in this Notice, may apply to the Companies Tribunal for an order confirming or varying this Notice in whole or in part, or setting aside this Notice and directing the Commission to cancel the reservation, or defensive registration, of the name.

- An application to the Companies Tribunal as discussed above may be made in Form CTR 142 any time within 3 months after the date on which that person received a copy of this Notice, or later with leave of the Tribunal for good cause.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429 Pretoria 0001
Republic of South Africa
tel: 0861 843 384

www.cipc.co.za

Date: ________________________________

Concerning:

(Name, address and file number of Application:)
Name: ________________________________
Address: ________________________________________________________________
File number: _____________________________________________________________

The Commission confirms that the application identified above has been approved, and the name

(Insert the name reserved, or registered)
Name: ________________________________

has been:

☐ reserved in the name of the person shown below, under reservation number # ________________________________;

☐ defensively registered in the name of the person shown below, under registration number # ________________________________;

☐ transferred to the person shown below.

(name) ________________________________

In conjunction with this notice, the Companies Commission:

☐ Has not issued another Notice contemplated in s. 12 (3);

☐ Has issued a Notice of a Potentially Contested Name;

☐ Has issued a Notice of a Potentially Offensive Name.

Name and Title of person signing on behalf of the Commission:

________________________________________

Authorised Signature: ________________________________

Commission Seal
Notice CoR 9.5

About this Notice

• This notice is issued in terms of Regulation 9, 10 or 14 of the Companies Regulations, 2011.

• In terms of section 160 of the Companies Act, 2008, and Regulation 13 of the Companies Regulations, 2011, the person to whom this notice is delivered may apply to the Companies Tribunal for an order confirming or varying this Notice in whole or in part, or setting aside this Notice and directing the Commission to reserve the name as applied for.

• An application to the Companies Tribunal as discussed above may be made in Form CTR 142 any time within 20 business days after the date of this Notice, or later with leave of the Tribunal.

Notice Refusing Name Reservation or Defensive Registration

Date: _____________

Concerning:

(Name, address and file number of Application:
Name: __________________________
Address: __________________________
File number: __________________________

The Commission notifies the Applicant that the application identified above has been refused, because the proposed name

(Insert the name as applied for)
Name: __________________________

☐ does not satisfy the requirements of section 11 of the Act, or Regulation 8, or both; or

☐ is a name that the applicant is not entitled to use, in terms of section 12 (2) of the Act, or is not entitled to register in terms of section 12 (9) of the Act; or

☐ is identical or confusingly similar to the following comparative names:

__________________________________________

__________________________________________

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
tel: 0861.843.384

www.cipc.co.za

Name and Title of person signing on behalf of the Commission:

Commission seal

Authorised Signature: _______________________________
Notice CoR 9.6

Notice of Potentially Contested Name

Date: ________________________________

To:

(Name and Address of person for whom a name has been reserved or
defensively registered and Commission file number)
Name: ______________________________________
Address: ____________________________________
File number: __________________________________

Concerning the name:

(Insert the name that has been reserved or registered)
Name: ______________________________________

Which has been reserved or defensively registered as notified in Confirmation Notice # __________, dated ____________.

The Commission advises that the Applicant’s right, in terms of
Section 11 of the Companies Act, to use the reserved or defensively regis-
tered name may be contestable by one or more persons who appear to have
an interest in the use of the name, or a substantially similar name.
Comparative name: ________________________________

The Commission requires the Applicant to serve a copy of the
Application, and Confirmation Notice # __________, on the following:
(Name and Address of person or persons who may have an interest in the use of
the reserved name)
Name: ______________________________________
Address: ____________________________________

Name and Title of person signing on behalf of the Commission:

Authorised Signature: ________________________________
Notice of Potentially Offensive Name

Date: __________________________

To the South African Human Rights Commission, and to:

(Name and Address of person for whom a name has been reserved or registered and file number)

Name: __________________________
Address: __________________________
File number: ______________________

Concerning the name:

(Insert the name reserved)
Name: __________________________

Which has been reserved, or defensively registered, as notified in Confirmation Notice #_______, dated ________________.

The Commission advises that the Applicant's right, in terms of Section 11 of the Companies Act, to use the reserved or defensively registered name may be contestable on the grounds that the name is not permitted to be used, in terms of section 11 (2)(d) of the Act.

Name and Title of person signing on behalf of the Commission:

Authorised Signature: __________________________
Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 10.1

Application for Defensive Name Registration

Applicant: ____________________________

Customer code: ____________________________

(Name, Address or identity or registration number of Applicant:)

Name: ____________________________

Address: ____________________________

Identity/Reg No: ____________________________

The Applicant applies for a defensive registration of the following name in terms of s. 12(9) of the Companies Act, 2008:

[Insert the proposed name to be reserved]

Name: ____________________________

1. Does the name -

(a) include any word in a language that is not an official language of the Republic?

Yes [ ] No [ ]

(b) include any word, number or other element that constitutes a registered trade mark, mark in respect of which an application for registration has been filed in the Republic, or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993?

Yes [ ] No [ ]

(c) fall within the category of names restricted in terms of section 11 (2)(c) of the Companies Act, or Regulation 8(5)?

Yes [ ] No [ ]

2. Is the name similar to that of another company, close corporation or co-operative?

Yes [ ] No [ ]

If the answer to any question above is "Yes", please attach a separate sheet setting out the information or satisfactory evidence required by Regulation 8 (3) to (6), as applicable.

I declare that the information in this application is true. If I am not the applicant, I declare that the Applicant has authorised me to make this application.

Signature: ____________________________ Date: ____________________________

Commission file number: ____________________________ Date filed: ____________________________

For Commission
Use Only:

Contacting the Commission
The Companies and Intellectual Property Commission of South Africa
Postal Address: PO Box 429 Pretoria 0001
Republic of South Africa
tel: 0861 843 384
www.cipc.co.za
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA

Form CoR 10.2

Application to Renew a Defensive Name Registration

Applicant: ________________________________

Customer code: ________________________________

(Name, Address and identity or registration number of Applicant:)
Name: ________________________________
Address: ________________________________
Identity/Reg.No: ________________________________

The Applicant applies to renew the registration of the following in terms of s.12(9)(b) of the Companies Act, 2008:

(Insert the registered name, and the registration number, as shown on Form CoR 9.4)
Name: ________________________________
Registration no: ________________________________

I declare that the information in this application is true. If I am not the applicant, I declare that the Applicant has authorised me to make this application.

Signature ________________________________ Date ________________________________

Commission file number: ________________________________ Date filed: ________________________________

For Commission
Use Only:

Contacting the Commission
The Companies and Intellectual Property Commission of South Africa
Postal Address: PO Box 429 Pretoria 0001 Republic of South Africa
tel: 0861 843 384 www.cipc.co.za
### Application to Transfer a Reserved or Defensively Registered Name

**Applicant:**

**Customer code:**

| (Name, Address and identity or registration number of Applicant:) |
| Name: |  |
| Address: |  |

| Identity/Reg No.: |  |

The Applicant applies to transfer the reservation or registration of the following name in terms of s.12(5) of the Companies Act, 2008

| (Insert the reserved name, and the reservation number, or defensive name or registration number as shown on Form CoR 9.4) |
| Name: |  |
| Number: |  |

The reserved or registered name is to be transferred from the Applicant, as identified above, to the following person:

| (Name, address and identity or registration number of Transferee:) |
| Name: |  |
| Address: |  |
| Identity/Reg. No.: |  |

(If the Applicant is not the Transferor of the name concerned, the Transferor must complete the following Declaration:)

I consent to the transfer of a name as applied for in this application.

**Signature**

**Date**

---

**Contacting the Commission**

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429

Pretoria 0001

Republic of South Africa

tel: 0861 843 384

www.cipc.co.za

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Notice CoR 11.2

About this Notice

• This notice is issued in terms of Regulation 11 of the Companies Regulations, 2011.

• In terms of section 160 of the Companies Act, 2008, and Regulation 13 of the Companies Regulations, 2011, the person to whom this notice is delivered may apply to the Companies Tribunal for an order confirming or varying this Notice in whole or in part, or setting aside this Notice and directing the Commission to transfer the reserved name as applied for.

• An application to the Companies Tribunal as discussed above may be made in Form CTR 142 anytime within 20 business days after the date of this Notice, or later with leave of the Tribunal.

Notice Refusing Name Transfer

Date: __________________________

Concerning:

(Name, address and file number of Application:)
Name: __________________________________________
Address: _________________________________________
File number: _______________________________________

The Commission notifies the Applicant that the application identified above to transfer the reservation or defensive registration of the name (Insert the name reserved)
Name: __________________________________________

has been refused, because the proposed transferee appears to be not entitled to use that name, in terms of section 12(2) of the Act.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
Pretoria 0001
Republic of South Africa
tel: 0861 843 384
www.cipc.co.za

Name and Title of person signing on behalf of the Commission:

________________________________________

Authorised Signature:
Notice CoR 12.1

About this Notice

- This notice is issued in terms of Section 12 (60) of the Companies Act, 2008, and Regulation 12 of the Companies Regulations, 2011.

- If this Notice requires a person to show cause, the person must respond within 40 business days after the date of this Notice, or the relevant Application will be refused.

- In terms of section 160 of the Companies Act, 2008, and Regulation 13, if this Notice serves any other purpose, the person to whom this notice is delivered may apply to the Companies Tribunal for an order confirming or varying this Notice in whole or in part, or setting aside this Notice and directing the Commission to reserve a name, or extend or transfer a reserved name, as applied for.

- An application to the Companies Tribunal as discussed above may be made in Form CTR 142 any time within 20 business days after the date of this Notice, or later with leave of the Tribunal.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
tel: 0861 843 384
www.cipc.co.za

Notice Alleging Reservation System Abuse

Date: _______________________

To:

(Name and Address of Applicant, or Transferee)
Name: _______________________________________
Address: ______________________________________

Concerning the name:

(Insert the reserved, registered or proposed name)
Name: _______________________________________

The Commission advises that the Commission reasonably believes that the Applicant, Registrant, or Transferee in the application referred to above may be attempting to abuse the name reservation system for the purpose of selling access to names, or trading in or marketing names.

The Commission's belief is founded upon the following:

________________________________________________________________________

The Companies Commission

☐ requires the applicant to show cause why the application should be granted as contemplated in section 12 (6)(a) of the Act.

☐ refuses to extend the name reservation or registration, in terms of s 12 (6)(b).

☐ refuses to transfer the reserved name, in terms of s. 12 (6)(c).

☐ cancels the name reservation, in terms of s. 12 (6)(d).

Name and Title of person signing on behalf of the Commission:

________________________________________________________________________

Authorised Signature:
Notice of Incorporation

Customer code: ____________________________

1. The incorporators have incorporated a juristic person to be registered as:
   □ State owned company  □ Public company
   □ Personal Liability company  □ Private company
   □ Non Profit Company

2. The incorporation of the company is to take effect on:  
   □ The date the Registration Certificate is issued;  
   □ ________________, if later than the registration date.

3. The company’s first financial year will end on ________________.

4. The company’s registered office address is:  
   ___________________________________________________________________________

5. There are ____ initial directors of the company, as listed in Annexure A.

6. The company name is to be:  
   □ The company’s registration number, followed by the elements required by section 11 (3).  
   □ The name currently reserved or registered under # ___________________ for use by ________________.  
   □ The first of the names set out on Annexure B that proves to be eligible, in terms of Regulation 14 (1)(b)(iii).

7. The company’s Memorandum of Incorporation, attached in form CoR____ (indicate form number) or unique □ (tick if appropriate).
   □ Has no provisions of the type contemplated in section 15 (2) (b) or (c).
   □ Has provisions of the type contemplated in section 15 (2) (b) or (c), as listed in Annexure C.

I declare that the information in this Notice and the Annexures is true. If I am not one of the incorporators, I declare that I have been authorised by the Incorporator(s) to file this Notice.

Signature ____________________________

Date ____________________________

Commission file number: ____________________________

Date filed: ____________________________

For Commission  

Use Only: ____________________________
Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 14.1
Annexure A

This form is issued in terms of section 13 of the Companies Act, 2008 and Regulation 14 of the Companies Regulations, 2011.

Annexure A must be completed and attached to the Notice of Incorporation when it is filed.

A public company, or a state owned company, must have at least 3 initial directors.

A non-profit company must have at least 3 initial directors.

A private company, or a personal liability company, must have at least 1 initial director.

A company is not registered until the Commission has issued a Registration Certificate in Form CoR 14.3

Notice of Incorporation
Initial Directors of the Company

The Incorporators confirm that each person named below has consented to being appointed in terms of s 66 (7) (b) as a director of the company, whose Memorandum of Incorporation is attached.

Full name/former name, if any:
Identity number:
Nationality:
Passport number, if not South African:
Date of appointment:
Designation in company:
Residential address:
Business address:
Postal address:
Occupation:
South African resident: (yes) (no)

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
tel: 0861 843 384
www.cipc.co.za

Commission file number: Date filed:
For Commission Use Only:

G11-030291—C
Form CoR 14.1
Annexure B

Notice of Incorporation
Alternative Names for the Company

The Incorporators request the Commission to assign to the company the first eligible name from among the following:

(In insert the proposed name or names in the order you wish them to be considered by the Commission.

1. 
2. 
3. 
4. 

Every word of each proposed name must be expressed using the alphabet that is commonly used for writing in an official language of the Republic, and any number, other than a date, must be expressed in words, or Roman or Arabic numerals.

A company is not registered until the Commission has issued a Registration Certificate in Form CoR 14.3.

1. Does any proposed name -
   (a) include any word in a language that is not an official language of the Republic? 
   (b) include any word, number or other element that constitutes a registered trade mark, mark in respect of which an application for registration has been filed in the Republic, or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993? 
   (c) fall within the category of names restricted in terms of section 11 (2)(c) of the Companies Act, or regulation 8 (5)?

2. Is any proposed name similar to that of another company, close corporation or co-operative?

If the answer to any question above is “Yes”, please attach a separate sheet setting out the information or satisfactory evidence required by Regulation 8 (3) to (6), as applicable, with respect to each name.

Commission file number: __________________________ Date filed: __________________________

For Commission __________________________ Use Only: __________________________
Postal Address: PO Box 429, Pretoria 0001, Republic of South Africa Tel: 0861 843 384 www.cipc.co.za
Form CoR 14.1
Annexure C

Notice of Incorporation
Notice of Ring Fencing Provisions

The Incorporators advise that the Memorandum of incorporation of the company, which is attached, contains the following provisions that prohibit, restrict, or impose special procedural requirements upon the amendment of any part of the Memorandum of Incorporation.

For each provision, show the Article number, its purpose, and the relevant Article of the Memorandum of Incorporation.

<table>
<thead>
<tr>
<th>Article No</th>
<th>Purpose</th>
<th>Article wording</th>
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Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
Tel: 0861 843 384
www.cipc.co.za

Commission file number: _____________________________
Date filed: _____________________________

For Commission Use Only: _____________________________ _____________________________
Form CoR 14.1
Annexure D

Notice of Incorporation
Notice of Company Appointments

The Incorporators advise that the following persons have been appointed, and consented to serve, as the initial company secretary, auditor, or members of the audit committee of the company, as indicated.

For each person listed, provide the information as indicated:

<table>
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<tr>
<th>Name and Address</th>
<th>Identity, Registration or Practice Number</th>
<th>Office to which appointed</th>
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Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
Tel: 0861 843 384
www.cipc.co.za
Companies and Intellectual Property Commission  
Republic of South Africa

Form CoR 14.2  

Notice Rejecting a Notice of Incorporation

Date: ________________________________

Concerning:

(Name and file number of Notice of incorporation)

Name: ____________________________________________________________
File Number: ______________________________________________________

The Commission informs the Incorporators who filed the Notice of incorporation shown above that their Notice has been rejected in terms of section 13 (4) of the Companies Act, 2008, because:

☐ The Notice of Incorporation is incomplete or improperly completed.

☐ The Notice of Incorporation does not identify a sufficient number of qualified initial directors of the company. In particular—

☐ The number of identified directors does not satisfy the requirements of the Act.

☐ The Commission believes that
(Name and identity number of disqualified person)
Name: ___________________________________ Identity No.:______________

identified as an initial director is disqualified to serve in that capacity, and the number of remaining directors does not satisfy the requirements of the Act.

Name and Title of person signing on behalf of the Commission:

Authorised Signature:

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)
Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 14.3

Registration Certificate

Date: ______________________________________

Concerning:
(Name and Registration Number of Company)

| Name: ______________________________________ |
| Registration number: ________________________ |

The above named company has been registered in terms of section 14 of the Companies Act, 2008. In accordance with the Notice of Incorporation, the registration of the company takes effect on—

☐ The date shown above.

☐ (Later Date as shown on Notice of Incorporation)

The Company’s name, as shown above—

☐ is in accordance with the name option selected on the Notice of Incorporation.

☐ has been altered by the Commission in terms of section 14 (2)(a).

☐ has been assigned by the Commission as an interim name in terms of section 14 (2)(b). The Company is invited to file an amended Notice of Incorporation to change the name.

In conjunction with this Certificate, the Companies Commission:

☐ Has not issued another Notice contemplated in section 12 (3).

☐ Has issued a Notice of a Potentially Contested Name.

☐ Has issued a Notice of a Potentially Offensive Name.

Name and Title of person signing on behalf of the Commission:

Authorised Signature: ________________________

Seal of Commission

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)
Memorandum of Incorporation of

(Insert Name of Company)

which is a private company, has __ director(s) and __ alternate
directors, is authorised to issue no more than _________ shares of a
single class of common shares as described in Article 2, and is referred
to in the rest of this Memorandum of Incorporation as “the Company”.

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

Adoption of Memorandum of Incorporation

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

<table>
<thead>
<tr>
<th>Name and address of incorporator</th>
<th>Identity or Registration #</th>
<th>Signature</th>
<th>Date</th>
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Contacting the Commission

The Companies and Intellectual
Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa

Tel: 0861 843 384
www.cipc.co.za

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)
Article 1 - Incorporation and Nature of the Company

1.1 Incorporation

(1) The Company is incorporated as a private company, as defined in the Companies Act, 2008.

(2) The Company is incorporated in accordance with, and governed by—

(a) the provisions of the Companies Act, 2008 without any limitation, extension, variation or substitution; and

(b) the provisions of this Memorandum of Incorporation.

1.2 Powers of the Company

(1) The Company is not subject to any provision contemplated in section 15 (2)(b) or (c).

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

1.3 Memorandum of Incorporation and Company rules

(1) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b).

(2) The authority of the Company’s Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5), is not limited or restricted in any manner by this Memorandum of Incorporation.

(3) The Board must publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each shareholder by ordinary mail.

(4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1), by delivering a copy of those rules to each shareholder by ordinary mail.

1.4 Optional provisions of Companies Act, 2008 do not apply

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

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

Article 2 - Securities of the Company

2.1 Securities

(1) The Company is authorised to issue no more than the number of shares of a single class of common shares with no nominal or par value as shown on the cover sheet, and each such issued share entitles the holder to—

(a) vote on any matter to be decided by a vote of shareholders of the company;

(b) participate in any distribution of profit to the shareholders; and

(c) participate in the distribution of the residual value of the company upon its dissolution.

(2) The Company must not make an offer to the public of any of its securities.

(3) The pre-emptive right of the Company’s shareholders to be offered and to subscribe for additional shares, as set out in section 39, is not limited, negated or restricted in any manner contemplated in section 39 (2), or subject to any conditions contemplated in that section.

(4) This Memorandum of Incorporation does not limit or restrict the authority of the Company’s Board of Directors to—

(a) authorise the company to issue secured or unsecured debt instruments, as set out in section 43 (2); or

(b) grant special privileges associated with any debt instruments to be issued by the company, as set out in section 43 (3);

(c) authorise the Company to provide financial assistance to any person in relation to the subscription of any option or securities of the Company or a related or inter-related company, as set out in section 44;

(d) approve the issuing of any authorised shares of the Company as capitalisation shares, as set out in section 47 (1); or

(e) resolve to permit shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47 (1).
2.2 **Registration of beneficial interests**

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

**Article 3— Shareholders and Meetings**

3.1 **Shareholders’ right to information**

Every person who has a beneficial interest in any of the Company’s securities has the rights to access information set out in section 26 (1).

3.2 **Shareholders’ authority to act**

1. If, at any time, there is only one shareholder of the company, the authority of that shareholder to act without notice or compliance with any other internal formalities, as set out in Section 57 (2), is not limited or restricted by this Memorandum of Incorporation.

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

3.3 **Shareholder representation by proxies**

1. This Memorandum of incorporation does not limit, restrict or vary the right of a shareholder of the Company—

   a. to appoint 2 or more persons concurrently as proxies, as set out in section 58 (3)(a); or

   b. to delegate the proxy’s powers to another person, as set out in section 58 (3)(b).

2. The requirement that a shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the shareholder’s rights at a shareholders meeting, as set out in section 58 (3)(c) is not varied by this Memorandum of Incorporation.

3. The authority of a shareholder’s proxy to decide without direction from the shareholder whether to exercise, or abstain from exercising, any voting right of the shareholder, as set out in section 58 (7) is not limited or restricted by this Memorandum of Incorporation.

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

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

3.5 **Shareholders meetings**

1. The Company is not required to hold any shareholders meetings other than those specifically required by the Companies Act, 2008.

2. The right of shareholders to requisition a meeting, as set out in section 61 (3), may be exercised by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting.

3. The authority of the Company’s Board of Directors to determine the location of any shareholders meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

4. The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders, is as provided for in section 62 (1).

5. The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.

6. The quorum requirement for a shareholders meeting to begin, or for a matter to be considered is as set out in section 64 (1) without variation.

7. The time periods allowed in section 64 (4) and (5) apply to the Company without variation.

8. The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation.
(9) The maximum period allowable for an adjournment of a shareholders meeting is as set out in section 64 (13), without variation.

3.6 Shareholders resolutions

(1) For an ordinary resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least 50% of the voting rights exercised on the resolution, as provided in section 65 (7).

(2) For a special resolution to be adopted at a shareholders meeting, it must be supported by the holders of at least 75% of the voting rights exercised on the resolution, as provided in section 65 (9).

(3) A special resolution adopted at a shareholders meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11), or elsewhere in the Act.

Article 4 - Directors and Officers

4.1 Composition of the Board of Directors

(1) The Board of Directors of the Company comprises the number of directors, and alternate directors shown on the cover sheet, each of whom is to be elected by the holders of the company’s securities as contemplated in section 68.

(2) The manner of electing directors of the Company is as set out in section 68 (2), and each elected director of the Company serves for an indefinite term, as contemplated in section 68 (1).

4.2 Authority of the Board of Directors

(1) The authority of the Company’s Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation.

(2) If, at any time, the Company has only one director, as contemplated in section 57 (3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

4.3 Directors’ Meetings

(1) The right of the Company’s directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised by at least 25% of the directors.

(2) This memorandum of incorporation does not limit or restrict the authority of the Company’s Board of Directors to—
   (a) conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3); or
   (b) determine the manner and form of providing notice of its meetings, as set out in section 73 (4); or
   (c) proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5), or
   (d) consider a matter other than at a meeting, as set out in section 74.

4.4 Directors compensation and financial assistance

This Memorandum of Incorporation does not limit the authority of the Company to—

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

of

[Insert Name of Company]

which is a profit company, has ___ director(s) and ___ alternate directors, is authorised to issue securities as described in Article 2, and is referred to in the rest of this Memorandum of Incorporation as "the Company".

Adoption of Memorandum of Incorporation

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

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<th>Identity or Registration #</th>
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Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address: PO Box 429
Pretoria 0001
Republic of South Africa
Tel: 0861 443 384
www.cipc.co.za

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)
Article 1 - Incorporation and Nature of the Company

In this Memorandum of Incorporation—

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

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

1.1 Incorporation

(1) The Company is incorporated as from______________________________as a—

_____ private company, as defined in section 8(2)(b).

_____ personal liability company, as defined in section 8(2)(c).

_____ public company, as defined in section 8(2)(d).

(2) The Company is incorporated in accordance with and governed by—

(a) the unalterable provisions of the Companies Act, 2008; and

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

(c) the provisions of this Memorandum of Incorporation.

1.2 Powers of the Company

(1) The Company—

_____ is not subject to any provisions contemplated in section 15 (2)(b) or (c).

_____ is subject to provisions contemplated in section 15 (2)(b) or (c), as set out in Part A of Schedule 1.

(2) The purposes and powers of the Company—

_____ are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii).

_____ are subject to the restrictions, limitations or qualifications contemplated in section 19 (1)(b)(ii), as set out in Part A of Schedule 1.

1.3 Memorandum of Incorporation and Company rules

(1) This Memorandum of Incorporation of the Company—

_____ may be altered or amended only in the manner set out in section 16, 17 or 152 (6) (b).

_____ may be altered or amended in the manner set out in section 16, 17 or 152 (6)(b), subject to the provisions contemplated in section 16 (1)(c), as set out in Part B of Schedule 1.

(2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) -

_____ is not limited or restricted in any manner by this Memorandum of Incorporation.

_____ is limited or restricted to the extent set out in Part B of Schedule 1.

(3) The Board must publish any rules made in terms of section 15 (3) to (5)—

_____ by delivering a copy of those rules to each shareholder by ordinary mail.

_____ in accordance with the requirements set out in Part B of Schedule 1.

(4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1)—

_____ by delivering a copy of those rules to each shareholder by ordinary mail.

_____ in accordance with the requirements set out in Part B of Schedule 1.
1.4 Application of optional provisions of Companies Act, 2008

(This sub-article is not to be used in the case of a public company)

(1) The Company—
   ___ does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.
   ___ does elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008, to the extent set out in Part C of Schedule 1.

(2) The Company—
   ___ does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations provided for in that Act.
   ___ elects in terms of section 118 (1)(c)(ii) to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations in terms of that Act, to the extent set out in Part C of Schedule 1.

2.1 Shares

(1) The Company is authorised to issue no more than—
   ___ number shares of a single class of common shares, each of which entitles the holder to—
   (a) vote on any matter to be decided by a vote of shareholders of the company;
   (b) participate in any distribution of profit to the shareholders; and
   (c) share in the distribution of the company’s residual value upon its dissolution.
   ___ the maximum number of each of the classes of shares set out in Part A of Schedule 2, subject to the preferences, rights, limitations and other terms associated with each such class, as set out in Part A of Schedule 2.

(2) The authority of the Company’s Board of Directors to increase or decrease the number of authorised shares of any class of the Company’s shares, to reclassify any shares that have been authorised but not issued, to classify any unclassified shares, or to determine the preferences, rights, limitations or other terms of any class of shares, as set out in section 36 (2)(b) and (3)(c) -
   ___ is not limited or restricted by this Memorandum of Incorporation.
   ___ is limited or restricted to the extent set out in Part A of Schedule 2.

(In the case of a public company)

(3) The shareholders of the Company—
   ___ do not have any pre-emptive right to be offered and to subscribe additional shares of the company.
   ___ have a common pre-emptive right to be offered and to subscribe for additional shares of the company, as set out in Part A of Schedule 3.
   ___ have only such pre-emptive rights to be offered and to subscribe additional shares of the company, if any, as are set out in the preferences, rights, limitations and other terms associated with their respective classes of shares.

(In the case of a private or personal liability company)

(3) The pre-emptive right of the Company’s shareholders to be offered and to subscribe for additional shares, as set out in section 39—
   ___ is unconditional, and is not limited, negated or restricted in any manner contemplated in subsection (2) of section 39.
   ___ is subject to the conditions, limitations, or restrictions set out in Part A of Schedule 3.
   ___ does not apply with respect to any shares of the Company.
to the subscription of any option or securities of the Company or a related or inter-related company, as set out in section 44 -

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

(6) Securities of the Company are to be issued—

2.2 Debt instruments

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

2.3 Registration of beneficial interests

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

Article 3 - Shareholders

3.1 Shareholders’ right to information

In addition to the rights to access information set out in section 26 (1), every person who has a beneficial interests in any of the Company’s securities has the further rights to information, if any, set out in Part A of Schedule 2 of this Memorandum of Incorporation.

3.2 Shareholders’ authority to act

(1) If, at any time, there is only one shareholder of the Company, the authority of that shareholder to act without notice or compliance with any other internal formalities, as set out in section 57 (2), is not limited or restricted by this Memorandum of Incorporation.

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

3.3 Representation by concurrent proxies

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

is not limited. restricted or varied by this Memorandum of Incorporation.
The authority of a shareholder’s proxy to delegate the proxy’s powers to another person, as set out in section 58 (3)(b)—
____ is not limited or restricted by this Memorandum of Incorporation.
____ is limited or restricted to the extent set out in Part B of Schedule 3.

3.5 Requirement to deliver proxy instrument to the Company

The requirement that a shareholder must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the shareholder’s rights at a shareholders meeting, as set out in section 58 (3)(c)—
____ is not varied by this Memorandum of Incorporation.
____ is varied to the extent set out in Part B of Schedule 3.

3.6 Deliberative authority of proxy

The authority of a shareholder’s proxy to decide without direction from the shareholder whether to exercise, or abstain from exercising any voting right of the shareholder, as set out in section 58 (7) -
____ is not limited or restricted by this Memorandum of Incorporation.
____ is limited or restricted to the extent set out in Part B of Schedule 3.

3.7 Record date for exercise of shareholder rights

If, at any time, the Company’s Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is—
____ as determined in accordance with section 59 (3).
____ as determined in the manner set out in Part C of Schedule 3.

Article 4 - Shareholders Meetings

4.1 Requirement to hold meetings

The Company—
____ is not required to hold any shareholders meetings other than those specifically required by the Companies Act, 2008.
____ is required to hold shareholders meetings, in addition to those specifically required by the Companies Act, 2008, as set out in Part A of Schedule 4.

4.2 Shareholders’ right to requisition a meeting

The right of shareholders to requisition a meeting, as set out in section 61 (3), may be exercised—
____ by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, as provided for in that section.
____ by the holders of at least ____% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite the provisions of that section.

4.3 Location of shareholders meetings

The authority of the Company’s Board of Directors to determine the location of any shareholders meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9)-
____ is not limited or restricted by this Memorandum of Incorporation.
____ is limited or restricted to the extent set out in Part B of Schedule 4.

4.4 Notice of shareholders meetings

The minimum number of days for the Company to deliver a notice of a shareholders meeting to the shareholders, as required by section 62 -
____ is as provided for in section 62 (1).
____ is ____ business days before the meeting is to begin.
4.5 Electronic participation in shareholders meetings

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

is not limited or restricted by this Memorandum of Incorporation.

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

4.6 Quorum for shareholders meetings

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

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

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

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

apply to the Company without variation

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

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

is not limited or restricted by this Memorandum of Incorporation.

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

4.7 Adjournment of shareholders meetings

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

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

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

4.8 Shareholders resolutions

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

50% of the voting rights exercised on the resolution, as provided in section 65 (7).

____% of the voting rights exercised on the resolution, despite section 65 (7).

the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 4.

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

75% of the voting rights exercised on the resolution, as provided in section 65 (9).

____% of the voting rights exercised on the resolution, despite section 65 (7).

the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 4.

(3) A special resolution adopted at a shareholders meeting is—

not required for a matter to be determined by the Company, except those matters set out in section 65 (11), or

elsewhere in the Act.

required, in addition to the matters set out in section 65 (11), for the matters set out in Part G of Schedule 4.

Article 5 - Directors and Officers

5.1 Composition of the Board of Directors

(1) The Board of Directors of the Company comprises of ____ directors, and ____ alternate directors, to be elected by

holders of the companies securities entitled to exercise voting rights, as contemplated in section 68.

(2) In addition to the elected directors -

there are no appointed or ex officio directors of the Company, as contemplated in section 66(4).

there are ____ appointed, and ____ ex officio directors of the Company, as contemplated in section 68, to be

designated in the manner specified in Part A of Schedule 5.

(3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a

director or a prescribed officer of the Company, a person -

need not satisfy any further eligibility requirements or qualifications.

must satisfy the additional eligibility requirements and qualifications set out in Part B of Schedule 5.

(4) Each elected director of the Company serves for -

an indefinite term, as contemplated in section 68 (1).
5.2 Authority of the Board of Directors

(1) The authority of the Company’s Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66 (1) -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part E of Schedule 5.

(2) If, at any time, the Company has only one director, as contemplated in section 57 (3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part F of Schedule 5.

5.3 Directors’ Meetings

(1) The authority of the Company’s Board of Directors to consider a matter other than at a meeting, as set out in section 74 -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part G of Schedule 5.

(2) The right of the Company’s directors to requisition a meeting of the Board, as set out in section 73 (1), may be exercised—
   __ by at least 25% of the directors, as provided in that section; or
   __ by at least __ % of the directors, despite the provisions of that section.

(3) The authority of the Company’s Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73 (3) -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part H of Schedule 5.

(4) The authority of the Company’s Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part H of Schedule 5.

(5) The authority of the Company’s Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part H of Schedule 5.

(6) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are -
   __ as set out in section 73 (5), without variation.
   __ as set out in section 73 (5) subject to the variations set out in Part H of Schedule 5.

5.4 Directors compensation and financial assistance

(1) The authority of the Company to pay remuneration to the Company’s directors, in accordance with a special resolution approved by the Company’s shareholders within the previous two years, as set out in section 66 (9) and (10) -
   __ is not limited or restricted by this Memorandum of Incorporation.
   __ is limited or restricted to the extent set out in Part I of Schedule 5.

(2) The authority of the Company’s Board of Directors, as set out in section 45, to authorise the Company to provide financial assistance to a director, prescribed officer or other person referred to in section 45 (2) -
   __ is not limited or restricted by this Memorandum of Incorporation.
(1) The authority of the Company to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78 (4) - 
   ____ is not limited, restricted or extended by this Memorandum of Incorporation. 
   ____ is limited, restricted or extended to the extent set out in Part J of Schedule 5.

(2) The authority of the Company to indemnify a director in respect of liability, as set out in section 78 (5) - 
   ____ is not limited or restricted by this Memorandum of Incorporation. 
   ____ is limited or restricted to the extent set out in Part J of Schedule 5.

(3) The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (7) - 
   ____ is not limited, restricted or extended by this Memorandum of Incorporation. 
   ____ is limited, restricted or extended to the extent set out in Part J of Schedule 5.

5.6 Committees of the Board

(1) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2)(a) - 
   ____ is not limited or restricted by this Memorandum of Incorporation. 
   ____ is limited or restricted to the extent set out in Part K of Schedule 5.

(2) The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2) (b) and (c) - 
   ____ is not limited or restricted by this Memorandum of Incorporation. 
   ____ is limited or restricted to the extent set out in Part K of Schedule 5.

Article 6 - General Provisions

Insert any further provisions desired in this or additional Articles.

Schedule 1 - Incorporation and nature of the Company

Part A

Insert—

(a) any 'Ring fencing' provisions as contemplated in section 15 (2) of the Act; and

(b) any provisions limiting the purposes or powers of the Company, as contemplated in section 19 (1)(b) of the Act.

Part B

Insert—

(a) any provisions relating to the amendment of the Memorandum of Incorporation, as contemplated in section 16 (1)(c) of the Act; and

(b) any provisions relating to the Board's authority to make rules for the Company, as contemplated in section 15 (3) to (5) of the Act.
Insert—

(a) any provisions to subject the Company to Chapter 3 of the Act on a voluntary basis, as contemplated in section 34 (2) of the Act; and

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

Schedule 2 - Company Securities

Part A

Insert—

(a) any provisions setting out the classes of authorised shares, and maximum number of authorised shares of each class, and the preferences, rights, limitations and other terms of each class of shares, shares as contemplated in section 15 (2) of the Act; and

(b) any provisions respecting the authority of the Board to exercise powers relating to shares, as contemplated in section 36 (3)(a) of the Act.

Part B

Insert any provisions restricting or limiting the authority of the Board to provide financial assistance to any person in relation to the subscriptions of securities or options, as contemplated in section 44 of the Act.

Part C

Insert any provisions restricting or limiting the authority of the Board with respect to the issuing of capitalisation shares, as contemplated in section 47 (1) of the Act.

Part D

Insert any provisions restricting or limiting the authority of the Board with respect to the issuing of debt instruments, as contemplated in section 43(2) or (3) of the Act.

Part E

Insert any provisions restricting or limiting the authority of the Board with respect to the registration of beneficial interests in the Company’s securities, as contemplated in section 56 (1) of the Act.

Schedule 3 - Shareholders

Part A

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

Part B

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

Part C

Insert any provisions respecting the fixing of a record date, as contemplated in section 59 of the Act.
Schedule 4 - Shareholders Meetings

Part A

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

Part B

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

Part C

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

Part D

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

Part E

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

Part F

Insert—

(a) any provision establishing different requirements for adoption of an ordinary resolution for different matters;

(b) any provision establishing different requirements for adoption of a special resolution for different matters; or

(c) Any provision imposing the requirement of a special resolution to approve any matter, as contemplated in section 65 (11) of the Act.

Schedule 5 - Directors of the Company

Part A

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

Part B

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

Part C

Insert any provision establishing an alternative manner of electing directors, as contemplated in section 68 of the Act.

Part D

Insert any provision limiting or restricting the authority of the Board to temporarily fill a vacancy on the Board, as contemplated in section 68 (3) of the Act.

Part E

Insert any provision limiting or restricting the authority of the Board to manage and direct the business and affairs of the