

# **SUBORDINATION AGREEMENTS**

## **Introduction**

This circular provides guidance that is to be read in conjunction with the .01  
Accounting and Auditing Guide on Trading Whilst Factually Insolvent.  
The circular does not replace the Guide but serves to provide additional  
guidance in situations where a subordination agreement is received from  
a creditor who is not a South African resident.

## **Where a subordination agreement is received from a .02 creditor who is not a South African resident**

In the situation where the creditor is not a South African resident, the .03  
auditor is advised to ensure that:

- The creditor is an entity duly organised, validly existing and in good standing under the laws of the country of domicile of the creditor and has legal power and authority to enter into the subordination agreement and to exercise its rights and perform its obligations thereunder.
- The conclusion of the agreement has been duly authorised and the agreement constitutes a legal and binding obligation of the creditor enforceable in accordance with its terms and is in proper legal form under the laws of the country of domicile of the creditor for enforcement therein.
- All necessary governmental consents and approvals required in connection with the execution, delivery, performance, validity or enforceability of the agreement have been obtained and are valid and subsisting.
- The creditor has no right of immunity, on the grounds of sovereignty or otherwise, from service of process or the jurisdiction of any competent court located in the Republic of South Africa in connection with any lawsuit, action or proceeding arising out of or relating to its obligations under the agreement.

It should be noted that the liquidation requirements in other jurisdictions .04  
may be different from those prevailing in the Republic of South Africa  
and that on the liquidation of the creditor a subordination agreement may  
be liable to be set aside, rendering it unenforceable.

- .05 The auditor should apply his judgement as to whether or not legal advice or confirmation from the holding company's auditors should be obtained with regard to any of the above matters.

**Johannesburg  
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**I Schoole  
Executive President**