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the right to do so has been specifically reserved in the offeror offer circular or combined circular, and such right has not subsequently been withdrawn by the offeror, If “no extension statements” in relation to the offer are included in announcements, circulars or any statement by or on behalf of an offeror, its directors (or equivalent) or advisers, and not withdrawn immediately if incorrect, then the offer may not subsequently be extended.

- (13) An offeror offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of the offeror.
- (14) A combined offer circular relating to a general offer, mandatory offer or partial offer is the responsibility of both the offeror and the independent board.
- (15) An offer circular relating to a section 117(1)(c)(i) of the Act disposal, Section 117(1)(c)(ii) of the Act amalgamation or merger or section 117(1)(c)(iii) of the Act scheme of arrangement is the -
  - (a) responsibility of the independent board if the proposed affected transaction is for a 100% beneficial interest or a 100% assets/undertaking acquisition by an offeror payable in cash or cash equivalents;
  - (b) responsibility of the independent board and the offeror if the proposed affected transaction is for a 100% beneficial interest or a 100% asset/undertaking acquisition by an offeror payable in offeror securities;
  - (c) responsibility of the independent board and the offeror if the proposed affected transaction is an acquisition for less than 100% of a beneficial interest or less than 100% of the assets/undertaking by an offeror payable in offeror securities.
- (16) Within 20 business days after an offeror offer circular has been posted, the independent board shall post the offeree response circular.
- (17) The consideration shall be settled within six business days of an offer being declared wholly unconditional and acceptance thereof by a holder, whichever is the later.
- (18) With respect to an exchange timetable regarding offers, the closing date of an offer is also the last day to trade and holders shall accordingly -
  - (a) be entitled to acquire securities up to and including the closing date of an offer; and
  - (b) be able to accept an offer in respect of all securities beneficially held, or acquired, up to and including the closing date of an offer.
- (19) An offer consideration may only be revised by announcing -
  - (a) an increase in the original announced offer consideration(s); or
  - (b) an alternate consideration to the original announced offer consideration (i.e. adding a share or cash consideration);

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collectively defined as the “revised offer consideration”.

- (20) The revised offer consideration announcement content shall comply with the requirements of a firm intention announcement.
- (21) If an offer consideration is revised, the offer shall be kept open for at least 15 business days following the date on which the revised offer consideration is announced, which announcement shall be posted to the offeree regulated company's relevant holders.
- (22) If an offer consideration is revised, all holders of relevant securities who have accepted the initial offer consideration shall be entitled to revise their initial acceptance and elect to receive the revised offer consideration.
- (23) No announcement revising an offer consideration(s) shall be posted on or after the 45th business day after an offer has opened unless such offer is unconditional as to acceptances.
- (24) If “no increase statements” in relation to the offer consideration such as “the offer consideration will not be further increased” or “our offer consideration remains at x cents per security and it will not be raised” are included in announcements, circulars or any statement by or on behalf of an offeror, its directors (or equivalent) or advisers, and not withdrawn immediately if incorrect, then the offer consideration may not subsequently be increased.
- (25) An independent board shall announce a response to a revised offer consideration announcement within five business days detailing its opinion and the opinion of its independent expert concerning the revised offer consideration(s) and any other details considered pertinent by such board.
- (26) Before an offer may be implemented or given effect to, the Panel must issue a compliance certificate against request.

**104. Duties of directors of offeree regulated companies***Authority s. 119(2) and 119(1)(c)(i)*

- (1) Offers require the expansion of a director's duty of good faith in terms of the “Standards of directors' conduct” in section 76 of the Act to include the general body of the offeree regulated company's securities holders concerned.
- (2) The directors of an offeree regulated company that is the subject of an offer shall not resign from the board of the offeree regulated company from the date of the firm intention announcement until the offer is declared unconditional or lapses or is withdrawn.
- (3) In an offer, and during the entire course of such offer, a director of an 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. Such disclosure must be made immediately when the director becomes aware of any such conflict. In such a

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case, where the director considers that such conflict or potential conflict may affect his independence, the director concerned must declare himself non-independent.

- (4) If a director does not declare himself non-independent and the board of the offeree regulated company considers such director to be non-independent, the board must declare the director to be non-independent.
- (5) A non-independent director may not tender an opinion or vote on any matters at a meeting of the independent board, and must recuse himself from its deliberations. However, the independent board may determine the extent of his attendance at any of its meetings for a defined purpose, such as furnishing factual information.
- (6) The determination of independence affects primarily offeree regulated company directors but may also be relevant to offerors.
- (7) If an offeror is not a company, references to offeror directors apply equally to trustees of trusts, partners of partnerships, members of a consortium and similar personae.
- (8) The following situations are relevant in determining independence but are not considered to be 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 such presumption is rebuttable at the instance of the independent board. If 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 and/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) represents 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 who is offered any substitute share/option scheme, separate offer or acceleration of vesting periods which 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 is non-independent.

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- (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.

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

Each member of an independent board, and where applicable, an independent board of an offeror, must ensure that he has received all necessary information in order to provide a fully informed opinion to relevant securities holders concerning an offer and for that purpose must -

- (a) meet with all appointed advisers to be briefed on all details of the offer, including the offer mechanism, terms, conditions and other relevant information;
- (b) whilst respecting regulatory timetables, ensure that he has sufficient time to discharge all duties and responsibilities and resist haste and pressured time deadlines; and
- (c) ensure he is properly informed of the offeree regulated company's value per security or, where applicable, the offeror company's value per relevant security.

**106. Independent board opinion**

- (1) The independent board of an offeree regulated company that is the subject of an offer must obtain appropriate external advice from an independent expert in the form of a fair and reasonable opinion.
- (2) The independent board must take cognisance of the fair and reasonable opinion received in forming its own opinion on an offer consideration(s), which opinion must be communicated to the relevant offeree regulated company's 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 where the offer is a disposal of assets or undertaking in terms of section 112 of the Act; or
  - (b) place reliance upon a valuation performed by the appointed independent expert on the offeree regulated company's securities that are the subject of an offer, including an attributable value per security where the offer is a disposal of assets or undertaking in terms of section 112 of the Act, after performing the

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requisite amount of work that satisfies the independent board that it is justified in placing reliance upon such valuation.

- (4) An independent board must form a clear basis for the expression of an opinion to relevant holders dealing with value and price compared to the consideration offered.
- (5) If the consideration offered per security exceeds either the estimated fair value per security or current traded price per security, but not both, a split opinion clearly detailing the independent board's view is required e.g. fair but not reasonable or reasonable but not fair.
- (6) An independent board must form a view of a range of fair value, based upon an accepted valuation approach, of the offeree regulated company securities. An offer with a consideration per offeree regulated company security within the fair value range is generally considered to be fair.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) If the independent board is not unanimous in its opinion, all differing opinions of members, including reasons, must be provided to holders.

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**107. Independent expert**

- (1) The Act and the Takeover Regulations collectively require the appointment of an independent expert by an offeree regulated company and, where applicable, an offeror company (when offeror securities are offered as whole or part offer consideration), in regard to offers (being qualifying disposals, amalgamations or mergers, schemes of arrangement, general offers, mandatory offers, partial offers and comparable offers) and to provide a report in the form of a fair and reasonable opinion to the relevant board.
- (2) The independent expert's fair and reasonable opinion must address the same concepts of fairness and reasonableness described in Regulation 106.
- (3) The independence of the independent expert requires that the independent expert must not only be able to show that it is independent but must also take into account whether it will be perceived to be independent taking into account any other existing relationships and appointments.
- (4) The independent expert must satisfy the Panel that it is competent to act in respect of the offer, which the Panel may challenge if it is not satisfied.
- (5) Notwithstanding any prior approval given by the Panel, the Panel may at any time, either itself or in response to written representations by holders of relevant securities, require the appointment by either or both of the offeror and the offeree regulated company of a further independent expert approved by the Panel.
- (6) The independent expert's valuation of the offeree regulated company shall be performed in accordance with generally accepted valuation approaches and methods in use in the market from time to time including in order of preference -
  - (a) capitalisation, income or cash flow approach which relies on the 'value-in-use' principle and requires determination of the present value of future cash flows over the useful life of the asset or business;
  - (b) comparative or market approach which relies on the principle of 'willing buyer, willing seller' and requires that the amount obtainable from the sale of an asset or business is determined as if in an arm's-length transaction; and
  - (c) cost approach which relies on historical amounts spent on the asset or business.
- (7) In respect of mineral companies the valuation approach and methodology must comply with the SAMVAL code.
- (8) The content of the independent expert's fair and reasonable opinion in relation to an offer must, inter alia, include the following -
  - (a) the date of the fair and reasonable opinion and confirmation that the fair and reasonable opinion has been given to the relevant board concerned for the sole

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purpose of assisting the relevant board in forming and expressing an opinion for the benefit of holders, excluding the offeror;

- (b) a statement that the fair and reasonable opinion may be included, in whole or in part, in any required regulatory announcement or documentation;
- (c) a clear expression of opinion dealing with the fairness and reasonableness of the offer consideration(s) in regard to holders, excluding the offeror;
- (d) a detailed list of all source documentation used and reviewed and work done in accordance with the scope of the appointment;
- (e) the valuation approach adopted and method employed and all material assumptions underlying the valuation approach and methodology e.g. without being exhaustive, in the case of the capitalisation / income approach, the number of explicit forecast growth years, the in perpetuity formula employed post the growth years, the economic assumptions used such as revenue pricing and growth, expense pricing and growth, taxation, exchange rates, interest rates, the method of calculating free cash flows or future benefits, the forecast capital structure showing costs of equity and debt and weighted average cost of capital used to calculate discount rates, whether nominal or real discount rates and interest rates have been used;
- (f) a range of final valuation values attributable to the relevant securities and a most likely value used as the core number for purposes of the expression of the opinion;
- (g) any other valuation or pricing approaches and methodologies used in corroborating the expression of the opinion e.g. the comparative approach or cost approach;
- (h) the fee payable or paid to the independent expert for the fair and reasonable opinion and confirmation that the fee is not contingent on or related to the outcome of the offer; and
- (i) a declaration of the independence and competence of the independent expert, which may require evidential justification if the Panel is not satisfied with such declaration.

**108. Variation in offers**

- (1) If an offer (including a partial offer in terms of section 125(3) of the Act) is subject to any other condition(s), which offer, if successfully implemented, would result in a beneficial interest entitling an offeror and its concert parties to either -
  - (a) exercise voting rights exceeding the prescribed percentage for the first time; or
  - (b) exercise all voting rights of a particular class of security or all voting rights of all securities issued not already held, where voting rights exceeding the prescribed percentage were held pre the offer;

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- (2) After an offer opening contemplated in sub-regulation (1), the offer is amended through any other conditions being varied by a regulatory authority, which variation requires or permits the acquisition of a lesser beneficial interest than originally included in the offer, the offeror and its concert parties must obtain the approval of the independent holders of more than 50% of the general voting rights of all issued securities of the offeree regulated company to approve such amended offer as a partial offer.
- (3) Failing such approval being obtained, within three months thereafter, the offeror and its concert parties shall dispose of that number of relevant securities which will either
  - (a) reduce the beneficial interest voting rights to –
    - (i) a level less than the prescribed percentage; or
    - (ii) the beneficial interest level which existed prior to the original offer being made; and
  - (b) during such period of disposal, the offeror and its concert parties shall only be entitled to exercise voting power as does not exceed the levels in Regulation 108.

**109. Solicitation campaigns**

Persons conducting any solicitation campaign(s) in which holders of an offeree regulated company are contacted regarding an offer and their acceptance or voting in respect of such offer, shall only be provided with previously published information which remains accurate.

**110. Information to offerors**

- (1) Any information, including particulars of holders of relevant securities, given to a preferred offeror or potential offeror shall on request be furnished equally and as promptly to a less welcome but *bona fide* offeror or potential offeror (“the less welcome potential offeror”).
- (2) The directors of an offeree regulated company are entitled to test the *bona fide* nature of a less welcome potential offeror by requiring that at the same time the information is to be furnished by the offeree regulated company, equivalent information concerning the less welcome potential offeror be given to the offeree regulated company.
- (3) The directors of the offeree regulated company are also entitled to determine whether any approach is on a nominee basis for an undisclosed ultimate offeror or undisclosed ultimate indirect beneficial owner (“ultimate person”), in which case the less welcome potential offeror is the undisclosed ultimate person.



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**111. Effect of interests held by non-related persons**

- (1) If non-related persons own non-controlling beneficial interests in a regulated company and are not in concert, there are no consequences in terms of the Part B and Part C of Chapter 5 of the Act and this Chapter.
- (2) If one of the non-related persons acquires control of another non-related person, they become related persons, and in effect a first person has acquired control of a second person.
- (3) The consequences of the first person and the second person being related persons is that if the aggregated interests of the related persons (being the first person and the second person) in the regulated company are equal to or exceed the prescribed percentage of voting rights in the regulated company, an affected transaction has occurred and a mandatory offer (and if necessary, comparable offers) is required to be made to the holders of the remaining securities of the regulated company, by the first person, failing which, by the second person. For example, consider person A who owns a non controlling beneficial interest in person C and person B who owns a non controlling beneficial interest in person C, and persons A and B are not related and are not acting in concert. If person A then acquires a controlling interest in person B this will give rise to the requirement to make a mandatory offer (and if necessary, comparable offers) to the holders of person B (If person A made a general offer to the holders of person B then the achievement of control by person A of person B would occur only after a successful outcome). If, after person A acquires control of person B, the aggregate of the interests in person C held by persons A and B are equal to or exceed the prescribed percentage of voting rights in person C, then person A, and failing person A then person B, must make a mandatory offer (and if necessary, comparable offers) to the remaining holders of person C, and so on in an unbroken series.

**112. Change in control**

- (1) Where a change in control takes place in a pyramid or intermediate pyramid, the offeror shall make an offer or offers to holders of securities of such pyramid and/or intermediate pyramid, if any is a regulated company, and to holders of securities of the controlled company, excluding securities held by the pyramid or intermediate pyramid, applying the principles from mandatory offers and comparable offers. For example, consider pyramid A, which is a trust, which owns a controlling interest in non regulated company B, which is an intermediate pyramid and which, in turn owns a controlling interest in regulated company C, which is an intermediate pyramid, which in turn owns a controlling interest in regulated company D, which is the controlled company. If there is a change in control in pyramid A, the Takeover Regulations do not apply to pyramid A or to the intermediate pyramid B, because neither are regulated companies, but Part B and Part C of Chapter 5 of the Act and this Chapter apply to the intermediate pyramid C and the controlled company D, which means that the offeror must make separate mandatory offers (and comparable offers if applicable) to the holders of securities in intermediate pyramid C and to the holders of securities in controlled company D in accordance with principles regarding mandatory offers and comparable offers.

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Regulation 113-r115

**113. Offers by persons acting in concert*****Authority s. 123(4)***

In addition to the offeror, each of the persons acting in concert with the offeror has the obligation to extend an offer.

**114. Waiver of mandatory offer*****Authority s.123***

- (1) Following publication by a regulated company of a transaction requiring the issue of securities as consideration for an acquisition, a cash subscription or a rights offer which would result in an obligation to make a mandatory offer by an acquirer or a subscriber (including an underwriter), or by any of their respective concert parties, there shall be no such obligation to make a mandatory offer if there is a waiver thereof by the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company in accordance with the principles detailed in section 125(3)(b)(ii) of the Act.
- (2) Notwithstanding the fact that the issue of securities is made conditional upon a waiver by the independent holders of more than 50% of the general voting rights of all issued securities of the regulated company, such waiver shall be nullified if any acquisitions are made by an acquirer or a subscriber (including an underwriter), or by any of their respective concert parties, in the period between the transaction announcement and date of the waiver.
- (3) At the date of obtaining the waiver, the acquirer or the subscriber (including an underwriter) concerned shall declare to the Panel on the prescribed form that it has not acquired any securities in breach of this Chapter.
- (4) A waiver requires a fair and reasonable opinion to be included in the circular in all instances other than a rights offer at a discount to the prevailing market price at the date of announcement.

**115. Comparable offers**

- (1) For purposes of section 125(2) of the Act -
  - (a) a mandatory offer in terms of section 123 of the Act, including a mandatory offer that is required to be made as a result of a reacquisition of securities in terms of section 48 or section 114 of the Act, will give rise to a comparable offer if the offeree regulated company has more than one class of security in issue and which are required to be dealt with in terms of section 125 of the Act;
  - (b) comparable offers will be required for all classes of issued security that have voting rights or could have voting rights in the future, including options. All schemes which are cash settled and have no present or future voting rights associated with them, such as cash settled phantom schemes and cash settled share participation rights schemes, which for settlement purposes, are

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dependent on a future security price or value of securities (which are the subject of an offer), must be taken account of and treated on an as equitable basis as the classes of security which are subject to a comparable offer;

- (c) the offer consideration(s) in a comparable offer is to be determined by the offeror taking account of the class of security to which the comparable offer is to be made. The fair and reasonable opinion given by the independent expert and the independent board opinion regarding the comparable offer must have the same opinions regarding fairness and reasonableness as the respective fair and reasonable opinions given by the independent expert and the independent board regarding the offer which gave rise to the comparable offer. For example, if an offer for ordinary shares in an offeree regulated company is opined upon as being fair and reasonable by an independent expert and as being fair and reasonable by the independent board, the respective opinions from the independent expert and from the independent board would likewise have to be fair and reasonable regarding a comparable offer. Similarly, an opinion from the independent expert stating an offer for ordinary shares was fair but not reasonable and the independent board's opinion stating that the offer was both fair and reasonable would require the same respective opinions regarding a comparable offer; and
- (d) Regulation 93 (3) and (4) apply to Section 125(2) of the Act.

**116. Consensual negotiations**

*Authority s. 126(1)*

- (1) Negotiations between a potential offeror and regulated company that are being pursued by both parties on a consensual basis give rise to the presumption that a bona fide offer might be imminent and in such circumstances the provisions of section 126 of the Act apply to the regulated company from the date of commencement of such consensual negotiations.
- (2) In the absence of consensual negotiations between a potential offeror and a regulated company, a regulated company that is the subject of rumour, speculation or even a cautionary announcement published by a potential offeror may presume that a bona fide offer is not imminent until a firm intention announcement is published.

**117. Acquisition of own securities by offeree**

- (1) An offeree regulated company and its subsidiary companies may not acquire the offeree regulated company's own securities without the prior written approval of the Panel, and the approval of the holders of relevant securities, or in terms of a pre-existing obligation or agreement entered into before the time contemplated in section 126(1) of the Act.

**118. Re-investment**

- (1) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, section 127(1) of the Act shall allow a re-investment alternative of the consideration

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offered (“re-investment consideration”) only to specific directors and management of an offeree regulated company provided that the Panel grants an exemption in accordance with section 119(6)(c) of the Act, which exemption may only be granted if -

- (a) a fair and reasonable opinion from an independent expert is obtained stating that the re-investment consideration is fair and reasonable to the independent shareholders of the offeree regulated company; and
  - (b) a majority vote of independent shareholders of the offeree regulated company is obtained in general meeting.
- (2) An independent board must establish and disclose any benefits offered to any offeree regulated company director or employee by an offeror.

**119. Sales during an offer period**

*Authority s.127(2)*

- (1) The Panel will not give consent for sales by an offeror or persons acting in concert with the offeror of offeree regulated company securities which are the subject of a mandatory offer during the offer period.
- (2) The Panel will only give consent for sales if -
  - (a) an offer, other than a mandatory offer, is being made; and
  - (b) the sale is not considered to be price manipulative and is considered justified in the circumstances.
- (3) Proposed sales that have been consented to by the Panel shall be made at the offer price.
- (4) The Panel shall require notice of any proposed sales, during an offer period, that it has consented to, to be published at least 24 hours in advance of selling stating:
  - (a) the name of the offeror or any person(s) acting in concert with the offeror that proposes to sell;
  - (b) the number or maximum number of securities that may be sold;
  - (c) the price, including a ratio arising from a securities swap, at which the number or maximum number of securities shall be sold, or alternatively, a statement that the price, including a ratio arising from a securities swap, at which the securities are sold, shall constitute the relevant offer price if an offer is made;
  - (d) that neither the offeror nor any persons acting in concert with the offeror shall acquire any securities in the offeree regulated company concerned during the offer period other than as contemplated in an offer subject to Part B and Part C of Chapter 5 of the Act and this Chapter; and

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- (e) that an announcement(s) will be made detailing the number and price, including a ratio arising from a securities swap, of securities sold, within 24 hours of such sale(s) being effected.

**120. Waivers**

- (1) With respect to a waiver that is obtained in terms of R123(a), for a period of six months immediately following such waiver -
  - (a) the acquirer;
  - (b) the subscriber (including an underwriter);
  - (c) any person who is acting in concert with a person contemplated in paragraphs (a) or (b),

shall not make an offer to any holder of securities of the offeree regulated company, or acquire any interest in any such securities, on more favourable terms than those acquired or subscribed for in terms of the transaction in question.

**121. Appointments to board of offeree**

- (1) If an offeree regulated company is the subject of an offer and a firm intention announcement has been published, the offeror and its concert parties shall not, from the date of the firm intention announcement until the offer is declared unconditional or lapses or is withdrawn -
  - (a) appoint any persons to the board of an offeree regulated company;
  - (b) exercise votes attaching to any securities held in the offeree regulated company.

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Regulation 122-r124

**Part D – Takeover Panel Procedures****122. General Authority of the Panel**

- (1) The Panel works on a day-to-day basis through its Executive Director, deputy Executive Director(s) and other officers and employees as contemplated in section 200 of the Act.
- (2) The Panel is empowered to co-operate with any regulatory bodies in or outside South Africa for the purpose of obtaining or furnishing information relevant to any aspect of the duties of the Panel or of such other regulatory bodies.

**123. All published documents to be approved***Authority s.119(4)(a)*

All documents, including announcements and circulars, must be approved by the Panel before posting or publication thereof.

**124. Consultations and Rulings**

- (1) Any person may approach the Panel through the Executive Director in accordance with section 201 of the Act.
- (2) Any advice given in a consultation with the Executive Director shall not have the effect of a Ruling and shall not bind the Panel in any way.
- (3) A Ruling may be made by the Executive Director upon written application or after a hearing.
- (4) All Rulings will be given taking account of the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable, for the Executive Director to exercise his powers without adherence to the principle of *audi alteram partem*. The requirements of confidentiality shall be respected unless the circumstances require otherwise.
- (5) Rulings will be given on the assumption that all information considered or provided is correct and complete. A Ruling may be formally withdrawn in the event that any information considered or provided proves to be incomplete or incorrect.
- (6) All Rulings which the Executive Director determines should be made available to the public, shall require publication of a notice, as directed by the Executive Director, stating that the Ruling has been placed on the Panel website. The operation of such a Ruling shall be suspended until any required notice is published. Failing compliance with the direction to Publish, the Executive Director shall procure publication of the notice at the expense of the relevant person.
- (7) Any person issued with a Ruling may -
  - (a) apply to the Takeover Special Committee for a hearing regarding the Ruling within:

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- (i) 5 business days after receiving that Ruling; or
- (ii) such longer period as may be allowed on good cause shown; and
- (b) after considering any representations by the applicant and any other relevant information, the Takeover Special Committee may confirm, modify or cancel all or part of a Ruling.
- (8) If the Takeover Special Committee confirms or modifies all or part of a Ruling, the applicant must comply with that Ruling as confirmed or modified, within the time period specified in it.
- (9) A decision by the Takeover Special Committee in terms of this Takeover Regulation is binding, subject to any right of review or appeal by a court.

**125. Procedure before the Executive Director and Takeover Special Committee at hearings**

- (1) At any hearing before the Executive Director or the Takeover Special Committee:
  - (a) each party shall state its case in writing beforehand and shall be permitted to call such witnesses as may give relevant evidence and to present argument orally and/or in writing;
  - (b) neither the Executive Director nor the Takeover Special Committee shall be obliged to apply the law of evidence;
  - (c) all hearings will be heard in accordance with the principle of *audi alteram partem*, unless it is fair, reasonable and justifiable, for the Executive Director or the Takeover Special Committee to exercise their powers without adherence to the principle of *audi alteram partem*,
- (2) Proceedings are informal.
- (3) The Executive Director or Takeover Special Committee, as the case may be, may call any evidence where it deems that course to be desirable. The proceedings of hearings may be recorded at the discretion of the Executive Director or Takeover Special Committee. Such recordings may be transcribed on such conditions as the Executive Director or Takeover Special Committee may prescribe.
- (4) The Executive Director or chairperson of the Takeover Special Committee shall control the proceedings at hearings and may, for each hearing, inter alia, prescribe the date and time of hearings and the time within which any particular action shall be taken.
- (5) All decisions, supported with reasons and a background summary of the matter, by the Executive Director or Takeover Special Committee shall be in writing and shall be given to the parties as soon as reasonably possible.
- (6) All decisions which the Executive Director or Takeover Special Committee determines should be made available to the public, shall require publication of a

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notice, as directed by the Executive Director or Takeover Special Committee, stating that the decision has been placed on the Panel website. Failing compliance with the direction to Publish, the Executive Director or Takeover Special Committee shall procure publication of the notice at the expense of the relevant person.

**126. Reviews**

- (1) Application for review of a compliance notice shall be noted within five business days of receipt of a compliance notice.
- (2) The Chairman of the Takeover Special Committee shall determine and control the proceedings at reviews and may, for each review, inter alia, prescribe the date and time of such review and the time within which any particular action shall be taken.
- (3) All decisions, supported with reasons and a background summary of the matter, by Takeover Special Committee shall be in writing and shall be given to the parties as soon as reasonably possible.
- (4) All decisions which the Takeover Special Committee determines should be made available to the public, shall require publication of a notice, as directed by the Takeover Special Committee, stating that the decision has been placed on the Panel website. Failing compliance with the direction to Publish, the Takeover Special Committee shall procure publication of the notice at the expense of the relevant person.

**127. Reporting to Panel**

- (1) For the purposes of Part B and Part C of Chapter 5 of the Act and this Chapter, -
  - (a) reporting compliance in terms of section 122(3)(a) of the Act requires completion and filing with the Panel of form TRF 1;
  - (b) reporting compliance in terms of section 122(3)(b) of the Act must take the form of an announcement (as defined in Part B and Part C of Chapter 5 of the Act and this Chapter).
- (2) Notwithstanding the fact that Section 122 of the Act does not require reporting compliance when a person disposes of a less than 1% interest of a class of securities which disposal moves such person's beneficial interest below a multiple of 5%, Part B and Part C of Chapter 5 of the Act and this Chapter require an announcement in the prescribed manner.
- (3) If a regulated company becomes aware that any required report has not been made, the company must lodge a complaint with the Panel in terms of Section 168 of the Act.

**128. Panel Services, fees and levies**

- (1) The services provided by the Panel fall into the following categories:



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- (a) providing verbal information and advice of a preliminary and general nature on the provisions of Chapter 5 of the Act and the Regulations;
  - (b) consultations from which specific or general, verbal or written, advice is provided which is non binding and does not constitute a Ruling;
  - (c) rulings issued in specific matters;
  - (d) examination of documents submitted for the Panel's approval;
  - (e) hearings and reviews.
- (2) The fees and levies chargeable for the Panel's services are as set out in Annexure 2 - Table CR 2A.
  - (3) When the charge fails to be calculated on the basis of the value of securities to be issued as consideration, it shall be computed by reference to the ruling market price of the relevant securities on the JSE Limited on the business day immediately prior to the firm intention announcement of the affected transaction or, as the case may be, by reference to the estimate of the value of any unlisted securities consideration offered. Where the offeree regulated company is unlisted, a further fee of R11 400 will be payable.
  - (4) When there are alternative offers, the alternative offer with the highest value will be used to calculate the value of the affected transaction. Comparable offers require all classes of securities to be included in the calculation of the consideration value for fee purposes.
  - (5) For hearings or reviews, as the case may be, before the Executive Director or the Takeover Special Committee, the fees shall be at the rate of R3 420 per billable hour, or part thereof;
  - (6) To the fees as aforesaid, there may be added the cost of serving any subpoenas, the cost of recording the proceedings, the cost of any expert engaged by the Panel and any other necessary or desirable disbursements incurred in connection with the particular matter. The word "fees" as used in this Chapter and Annexure 2 (Table CR 2A) shall, unless the context indicates otherwise, be deemed to include all such costs.
  - (7) Fees shall be paid—
    - (a) in the case of services referred to in Schedule 1.2, by the party requesting the service;
    - (b) in the case of services referred to in Schedule 1.3, by the party requesting the service;
    - (c) in the case of services referred to in Schedule 1.4, by the offeror or offeree regulated company, as the case may be;

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- (d) in the case of services referred to in Schedule 1.5, by the applicant or appellant, but subject to a discretion on the part of the Executive Director or the Takeover Special Committee, as the case may be, to order any other party involved in the hearing or review to pay the fees or to make a contribution in respect thereof;
- (8) The Panel may in its discretion waive or reduce any fees.
- (9) The Panel may require interest at the statutory rate to be added to an offer consideration(s) per security if the offeror has failed to open an offer or make payment in the time detailed in Regulation 103

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

Regulation 129-r130

**Chapter 6 - Business Rescue**

**Part A – Regulation of Business Rescue Practitioners**

*Authority: s. 138 and s. 223 (1)(d)(ii)*

**129. Establishment of Business Rescue Practice Regulatory Board**

- (1) The Business Rescue Practice Regulatory Board is hereby established as a juristic person, to function as an organ of state within the public administration, but as an institution outside the public service.
- (2) The Business Rescue Practice Regulatory Board —
  - (a) has jurisdiction throughout the Republic;
  - (b) must be impartial and perform its functions without fear, favour, or prejudice; and
  - (c) must exercise the functions assigned to it in —
    - (i) the most cost-efficient and effective manner; and
    - (ii) in accordance with the values and principles mentioned in section 195 of the Constitution.
- (3) In carrying out its functions, the Business Rescue Practice Regulatory Board may—
  - (a) have regard to international developments in the field of company law; or
  - (b) consult any person, organisation or institution with regard to any matter.

**130. Composition of Board**

- (1) The Business Rescue Practice Regulatory Board comprises -
  - (a) The following persons each of whom will be appointed by the Minister for a term of three years:
    - (i) two persons, to be the Chairperson and Deputy Chairperson of the Board, respectively;
    - (ii) two persons, each of whom is entitled in terms of the Act to practice as, and has experience in the practice of, a business rescue practitioner;
    - (iii) two persons, each of whom has successfully owned or managed a small or medium enterprise for a period of at least five years;
    - (iv) two persons knowledgeable and experienced in company law; and

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- (v) two persons knowledgeable and experienced in commercial accounting practice; and
  - (b) eight other persons, to be designated by the following entities, or their successors:
    - (i) two persons to be designated by the Turnaround Management Association – South Africa, or any successor to it;
    - (ii) two persons to be designated by The Law Society of South Africa;
    - (iii) four persons to be designated one each by -
      - (aa) the Banking Association of South Africa,
      - (bb) Business Unity South Africa;
      - (cc) South Africa Institute of Chartered Accountants; and
      - (dd) South Africa Institute of Professional Accountants
  - (2) A person designated in terms of sub-regulation (1)(b) serves until a new person is designated by the relevant entity that made the designation.
  - (3) Persons appointed or designated as members of the Board -
    - (a) may be re-appointed upon the expiry of their respective terms of office;
    - (b) must satisfy the requirements of section 205, read with the changes required by the context; and
    - (c) are subject to sections 206 and 207, read with the changes required by the context.
  - (4) At any time, the Board may co-opt additional members for a particular purpose and a limited period.
  - (5) Persons co-opted in terms of sub-regulation (4) serve until the completion of the purpose for which they were co-opted.
  - (6) The deputy chairperson may exercise and perform the powers and duties of the chairperson whenever the chairperson is unable to do so or while the office of chairperson is vacant.

**131. Meetings of the Takeover Regulation Panel**

- (1) The Chairperson of the Board -
  - (a) may determine the date, time and place for meetings of the Board; and