

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 132

- (b) presides at meetings of the Board, if present.
- (2) In the absence of the Chairperson, and the deputy chairperson, at a meeting of the Board the members present may choose one of their number to preside at the meeting.
- (3) The quorum for a meeting of the Board is a majority of the members.
- (4) The member presiding at a meeting of the Board may determine the procedure at the meeting.
- (5) The decision of a majority of the members of the Board present at any meeting at which there is a quorum is the decision of the Board.
- (6) If there is an equality of votes on any question before a meeting of the Takeover Board –
  - (a) the member presiding at the meeting may cast a deciding vote, if that presiding member did not initially have or cast a vote; or
  - (b) the matter being voted on fails, in any other case.
- (7) Proceedings of the Board are valid despite any vacancy that existed on the Board at the time, or the absence of any member during any part of those proceedings.
- (8) The Board may delegate the exercise of any of its powers or performance of any of its functions to the chairperson, any committee that the Board may establish, or any member of the Board.

**132. Functions of the Business Rescue Practice Regulatory Board**

- (1) The Board is responsible to regulate the practice of persons as business rescue practitioners in terms of Chapter 6 of the Act, by -
  - (a) advising the minister on the qualifications for admission of persons to the practice of business rescue practitioner;
  - (b) accrediting, and suspending or withdrawing the accreditation of, persons who meet the prescribed qualifications for admission to the practice of business rescue practitioner;
  - (c) maintaining a register of accredited business rescue practitioners;
  - (d) establishing standards and codes of good practice for the conduct of business rescue proceedings;
  - (e) receiving and resolving complaints concerning the conduct of business rescue practitioners; and
  - (f) any other functions necessary or ancillary to the functions set out above.

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

## Regulation 133

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- (2) The Board may -
- (a) consult with any person with a view to advising on the performance of its functions;
  - (b) issue, amend or withdraw information on current policy in regard to business rescue proceedings generally; and
  - (c) receive and deal with representations relating to any matter with which it may deal in terms of this Chapter; and
  - (d) impose any fee on applications for accreditation, or persons who are accredited as business rescue practitioners, as reasonably necessary to provide adequate resources for the discharge of its functions.
- (3) In exercising its powers and performing its functions the Board must not express any view or opinion on the commercial advantages or disadvantages of any proposed business rescue proceedings.

**133. Qualifications for person to be appointed as practitioner**

- (1) Within two years after the effective date, the Board must recommend to the Minister minimum qualifications for accreditation of persons as business rescue practitioners.
- (2) Until the promulgation, by regulation, of minimum qualifications contemplated in sub-regulation (1), a person may be appointed as the business rescue practitioner of a company if—
  - (a) the company is a state owned or public company, or a company that is required, in terms of Regulation 29 (1) (a) or (b), to have its annual financial statements audited, and the person —
    - (i) is an attorney, who has been admitted to practice as such for at least 10 years, and has engaged predominantly in commercial practice during that time;
    - (ii) is a member in good standing of a professional body that is a member of the International Federation of Accountants, who has been admitted to practice as such for at least 10 years, and has engaged predominantly in commercial practice during that time;
    - (iii) is a practising liquidator, or business turn-around practitioner, registered as such for at least 10 years; or
    - (iv) has a recognised degree in law, commerce or business management, and has at least 10 years experience in conducting business rescue proceedings; or

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- (b) the company is a company not contemplated in paragraph (a), and the person has at least 5 years standing or experience in respect of any of the qualifications set out in that paragraph.
- (3) If a juristic person or partnership is appointed as the business rescue practitioner of a company, auditor, the individual determined by that juristic person or partnership to be responsible for performing the functions of practitioner in terms of Chapter 6 of the Act must satisfy the requirements of this regulation.

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Chapter 6 - Business Rescue : Part B – Regulation of Business Rescue Practices

Regulation 134

**Part B – Regulation of Business Rescue Practices****134. Notices concerning business rescue proceedings***Authority: s. 129 and subsequent*

- (1) Regulation 6 does not apply to the publishing of any notice or information contemplated in this regulation.
- (2) A company that is required to publish a notice in terms of section 129 (3) or (4) or section 131 (8), must –
  - (a) deliver a copy of a Notice of Commencement of Business Rescue Proceedings in Form CoR 134.1 to every affected person;
  - (b) conspicuously post a copy of its Notice of Commencement of Business Rescue Proceedings –
    - (i) at its registered offices, and at its principal places of conducting its business activities;
    - (ii) on its website, if it has one; and
    - (iii) on SENS, if it is a listed company; and
  - (c) place an advertisement, with a copy of its Notice of Commencement of Business Rescue Proceedings, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (3) A company that 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 deliver to each such person a copy of Form CoR 134 (2).
- (4) 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 –
  - (a) deliver a copy of a Notice of Application concerning Business Rescue Proceedings, in form CoR 134.3 to each affected person known to the applicant; and
  - (b) place an advertisement, with a copy of its Notice of Application concerning Business Rescue Proceedings, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (5) A business rescue practitioner -
  - (a) required to notify affected persons –

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- (i) of the prospects for business rescue, as required by section 141 (2)(b);  
or
  - (ii) of the progress of business rescue proceedings, as required by section 132 (3)(b);
- must deliver a copy of a Notice Concerning the Status of Business Rescue Proceedings, in Form CoR 134.4 to each affected person; or
- (b) who has filed –
    - (i) a Notice of Termination of Business Rescue Proceedings; or
    - (ii) a Notice of Substantial Implementation of a Business Rescue Plan;

must deliver a copy of the notice to each affected person, and place an advertisement, with a copy of the relevant Notice, in a daily newspaper circulating to the general public within each province in which the company routinely conducts its business activities.
- (6) 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 as required by section 144(3)(a);
  - (b) delivering a copy of any such notice to any affected person entitled to receive it, who has not been served in terms of paragraph (a); and
  - (c) conspicuously displaying a copy of the notice -
    - (i) at its registered offices, and at its principal places of conducting its business activities;
    - (ii) on its website, if it has one; and
    - (iii) on SENS, if it is a listed company.
- (7) A business practitioner must publish a proposed business rescue plan, as required by section 150 (5), by -
- (a) delivering a notice of the availability of the plan to every affected person;
  - (b) conspicuously displaying a copy of the notice of the availability of the plan -
    - (i) at its registered offices, and at its principal places of conducting its business activities;
    - (ii) on its website, if it has one; and
    - (iii) on SENS, if it is a listed company; and

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- (c) providing without charge a copy of the plan to any affected person who requests such a copy.
- (8) A person required to file -
  - (a) A company resolution, as required by section 129, must attach to the resolution a Notice of Commencement of Business Rescue Proceedings, in Form CoR 134.1;
  - (b) a Notice of Termination of Business Rescue Proceedings, must do so in Form CoR 134.5; or
  - (c) a Notice of Substantial Implementation of a Business Rescue Plan must do so in Form CoR 134.6.

**135. Tariff of fees for practitioners**

- (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 2000 per hour, to a maximum of R 25 000 per day, in the case of a practitioner contemplated in Regulation 133 (2)(a); or
  - (b) R 1250 per hour, to a maximum of R 15 625 per day, in the case of a practitioner contemplated in Regulation 133 (2)(b).
- (2) 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.

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

Regulation 136

**Chapter 7 - Complaints, Applications and Tribunal Hearings**

**Part A – Definitions Used in This Chapter**

**136. Definitions**

In this Chapter, unless the context indicates otherwise –

- (a) “Answer” means a document as described in Regulation 148 and filed by a respondent;
- (b) “applicant” means a person who submits an application to the Tribunal in terms of 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 Regulation 149 for the purposes contemplated in section 170 (1)(b);
- (f) “Dispute Referral” means an initiating document as described in Regulation 138 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”, depending on the context, means -
  - (i) in the case of a Complaint Referral, the Commission, or other person referred to in Regulation 149;
  - (ii) in the case of a Dispute Referral, the person who referred the matter to the Tribunal or accredited entity in terms of section 166 (1), read with Regulation 138;
  - (iii) in any other proceedings, the Applicant;

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## Regulation 136

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- (i) “intervenor” means any person who has been granted standing to participate in particular proceedings before the Tribunal in terms of section 181 (c), read with Regulation 163;
  - (j) “presiding member” means the member designated by the chair to preside over particular proceedings of the Tribunal;
  - (k) “prohibited practice” means either –
    - (i) an action or matter inconsistent with the Act; or
    - (ii) an infringement of a person’s rights in terms of the Act or a company’s Memorandum of Incorporation, or its rules;other than as contemplated in section 168 (1)(a);
  - (l) “Reply” means a document as described in Regulation 152 and filed by a respondent;
  - (m) “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) the person concerned, if that person is not 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;
  - (n) “sheriff” means a person appointed in terms of section 2 of the Sheriff’s Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively.



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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part B – Alternative Dispute Resolution

Regulation 137-r138

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**Part B – Alternative Dispute Resolution**

**137. Accreditation of alternative dispute resolution providers**

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

- (1) An application for accreditation as an alternative resolution dispute provider must be made to the Commission in Form CoR 137.1
- (2) A notice accrediting an entity as an alternative dispute resolution provider must be in form CoR 137.2

**138. Alternative dispute resolution procedures**

- (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) by filing a completed Form CTR 99.1 with the Tribunal or accredited entity.
- (2) A Certificate of Failed Dispute Resolution, as contemplated in section 166 (2), must be in Form CTR 138.2.
- (3) 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.

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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part C – Commission Complaint and Investigation Procedures

Regulation 139-r142

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**Part C – Commission Complaint and Investigation Procedures**

**139. Receipt and filing of complaints**

- (1) A complaint to the Commission must be in form 139.1.
- (2) A notice of non-investigation by the Commission must be in Form 139.2.
- (3) A notice of referral by the Commission of a matter to alternative dispute resolution, must be in Form 139.3.

**140. Withdrawal of complaints**

- (1) At any time before the Commission has referred a complaint to the Tribunal, the complainant may withdraw the complaint.
- (2) The Commission may continue to investigate a complaint after it has been withdrawn, as if the Commission had initiated it.

**141. Multiple complaints**

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

**142. Consent orders**

- (1) If, at any time before issuing a Notice of Non-referral of a complaint, or referring a complaint to the Tribunal, it appears to the Commission that the respondent may be prepared to agree terms of a proposed order, the Commission –

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Regulation 143

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- (a) must notify the complainant, in writing, that a consent order may be recommended to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 10 business days after receiving that notice –
    - (i) whether the complainant is prepared to accept damages under such an order; and
    - (ii) if so, the amount of damages claimed.
- (2) If the Commission and the respondent agree the terms of an appropriate order, the Commission must –
- (a) refer the complaint to the Tribunal in form CoR 142.1;
  - (b) attach to the referral -
    - (i) a draft order in Form CTR 142.2
      - (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 142.3, 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 it is supported by a completed Consent to Damages, in form CoR 142.4.
- (4) A draft consent order may be submitted to the Tribunal 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.

**143. Commission investigations**

- (1) A notice to investigate issued by the Commission in terms of section 169 (1)(c) must be in Form 143.1

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Regulation 144-r146

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- (2) A summons issued by the Commission in terms of section. 176 (1) must be in Form CoR 143.2.

**144. Request for additional information**

- (1) At any time during an investigation, the Commission may -
- (a) informally request additional information from a party; and
  - (b) require a party to provide additional information, at any time, by delivering to the party a demand in Form 144.1, setting out the specific information that the Commission requires.
- (2) If, at any time, the Commission has reasonable grounds to believe that a document filed in respect of a investigation contains false or misleading information, the Commission may issue a Demand for Corrected Information in Form 144.2 to the person that filed that document.
- (3) Within 5 business days after being served with a Demand for Corrected Information, the person concerned may appeal to the Tribunal for an order confirming or setting aside the Demand.
- (4) If a person does not appeal a Demand for Corrected Information within the time allowed by sub-regulation (1), or if the Tribunal, on hearing the appeal, confirms the demand in whole or in part the person concerned must file corrected information.
- (5) If the Tribunal, on hearing an application in terms of sub-regulation (2), sets aside the Demand entirely, the Demand is a nullity.

**145. Procedures following investigation**

- (1) A Notice of Non-referral issued by the Commission must be in Form CoR 145.1.
- (2) A Referral of Complaint to the Tribunal in terms of section 170 (1)(b) must be in Form CoR 145.2.

**146. Compliance Notices and certificates**

- (1) A Compliance Notice issued by the Commission in terms of section 171 must be in Form CoR 146.1.
- (2) A Compliance Certificate issued by the Commission must be in Form CoR 146.2.

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Chapter 7 - Complaints, Applications and Tribunal Hearings : Part D – Applications to Tribunal

Regulation 147-r148

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**Part D – Applications to Tribunal**

**147. Initiating applications**

- (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 147; 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; or
  - (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;
  - (c) indicate the order sought; and
  - (d) state the name and address of each person in respect of whom an order is sought.

**148. Answering and Replying affidavits**

- (1) Within 10 business days after being served with an application for any relief other than condonation, a respondent against whom an order is sought -
  - (a) may serve an answering affidavit on the applicant, and on any other person against whom the order is sought; and
  - (b) must file the affidavit with proof of service.
- (2) Within 10 business days after being served with an answering affidavit that raises issues not addressed in the application or its supporting affidavit, the applicant may -
  - (a) serve a replying affidavit on the respondent, the Commission and on any other person against whom the order is sought; and

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Regulation 149-r151

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- (b) file a copy of the Replying affidavit and proof of service.

**149. Initiating complaint proceedings**

- (1) A Complaint Referral may be filed -
  - (a) by the Commission; or
  - (b) by a complainant in Form CTR 149 within 20 business days after the Commission has issued, or has been deemed to have issued, a Notice of non-referral to that complainant.
- (2) If, in respect of a particular matter, more than one person files a Complaint Referral in terms of sub-regulation (1)(b), the recording officer must combine those referrals under a common case number.
- (3) The person who files a Complaint Referral must serve a copy of it within 3 business days after filing on -
  - (a) The respondent;
  - (b) The Commission, if the Commission did not file the Referral; and
  - (c) On each other person who has previously filed a Complaint Referral in that matter.

**150. Form of Complaint Referral**

- (1) A complaint proceeding may be initiated only by filing a Complaint Referral in the prescribed form
- (2) A Complaint Referral must be supported by an affidavit setting out in numbered paragraphs -
  - (a) a concise statement of the particulars of the complaint; and
  - (b) the points of law, or material facts relevant to the complaint and relied on by the respondent.
- (3) A Complaint Referral may allege alternative prohibited practices based on the same facts.

**151. Answer**

- (1) Within 20 business days after being served with a Complaint Referral filed by the Commission, a respondent who wishes to oppose the Complaint Referral must -
  - (a) serve a copy of their Answer on the Commission; and

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Regulation 152

- (b) file the Answer with proof of service.
- (2) Within 20 business days after being served with a Complaint Referral filed by a person other than the Commission, a respondent who wishes to oppose the Complaint Referral must -
  - (a) serve a copy of their Answer on the Commission, on the person who filed the Referral, and on each other person who has previously filed a Complaint Referral in that matter; and
  - (b) subject to sub-regulation (4), file the Answer with proof of service.
- (3) An Answer that raises only a point of law must set out the question of law to be resolved.
- (4) Any other Answer must be in affidavit form, setting out in numbered paragraphs -
  - (a) a concise statement of the grounds on which the Complaint 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 Referral.
- (5) An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an Answer will be deemed to have been admitted.
- (6) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary in the circumstances.

**152. Reply**

- (1) Within 15 business days after being served with an Answer that raises issues not addressed in the Complaint Referral, other than a point of law alone, the person who filed the Complaint Referral may -
  - (a) serve a Reply on the respondent and the Commission, if the Commission did not file the Referral, and on each other person who filed a Complaint Referral in the matter; 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.

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Regulation 152

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- (3) If a person who filed a Complaint Referral 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.



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Regulation 153-r156

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**Part E - Tribunal Proceedings**

**153. Amending documents**

- (1) The person who filed a Complaint Referral may apply to the Tribunal by Notice of Motion in form CTR 153 at any time before the end of the hearing of that complaint for an order authorising them to amend their complaint referral as filed.
- (2) If the Tribunal allows the 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.

**154. Completion of file**

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

**155. 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 155.
- (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 in terms of section 31(5) at the earliest convenient date.

**156. 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 Commission;
  - (b) each complainant who has filed a Complaint Referral;
  - (c) intervenors; and
  - (d) the Respondent.
- (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

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Regulation 157

- (b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal, and the Court, if applicable.
- (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 Regulations of procedure, and are not open to the public.

**157. Other powers of member at pre-hearing conference**

- (1) 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 complaint.

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Regulation 158-r159

- (2) 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.
- (3) 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.
- (4) 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 rule apply to such a conference.

**158. Settlement conference**

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

**159. Initiating consent hearings**

- (1) If a Complaint Referral is to be proceeded with by way of a consent order -
  - (a) Regulations 150 to 158 inclusive, do not apply to the Complaint Referral; and
  - (b) the person filing the Complaint Referral must attach the following documents to it:
    - (i) a Notice of Motion in form CTR 153, for a consent order to be made;
    - (ii) a copy of each consent to order filed with the Commission in respect of the matter, if any; and
    - (iii) a draft order in the terms agreed, signed by the Commission and the respondent indicating their consent to the order.
- (2) At any time before the Tribunal makes a final order in a complaint proceeding, a party may request the Tribunal to make a consent order by filing a Notice of Motion in form CTR 153 with the documents listed in sub-regulation (1)(b).
- (3) A party intending to file a Notice of Motion in terms of sub-regulation (3) -
  - (a) must notify each complainant, in writing, that a consent order may be proposed to the Tribunal; and
  - (b) invite the complainant to inform the Commission in writing within 5 business days after receiving that notice -

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Regulation 160-r161

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- (i) whether the complainant is prepared to accept damages under such an order; and
  - (ii) if so, the amount of damages claimed.
- (4) A draft order filed in terms of this Rule must meet the requirements set out in Regulation 160, read with the changes required by context.

**160. Consent hearings**

- (1) Upon receiving a draft consent order, the recording officer must convene a hearing of the Tribunal at the earliest possible date.
- (2) If the Tribunal refuses to make a consent order as requested, or requires any changes that a party is unwilling to accept -
  - (a) The Commission or other complainant, as the case may be, may, as of right, amend the Referral and statement of particulars;
  - (b) The recording officer must serve each party, and complainant, if applicable, with -
    - (i) a notice that the motion for a consent order has been denied; and
    - (ii) a copy of the Complaint Referral and statement of particulars, in their original or amended form, as applicable;
  - (c) the Tribunal must proceed to consider the complaint in accordance with these Regulations as they apply to contested complaints generally, after -
    - (i) the time for an appeal from the decision of the Tribunal in terms of sub-regulation (2) has expired; or
    - (ii) if an appeal has been noted from that decision, after the Court has decided that appeal; and
  - (d) none of the members of the Tribunal who considered the motion for the consent order may participate in any further proceedings relating to that complaint.

**161. 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 and telephone number are available, those numbers.