



Takeover
Regulation
Panel

a member of **the dti** group

*AN INTRODUCTORY GUIDE
TO DEALING WITH THE
TAKEOVER REGULATION PANEL*



1. WHAT IS THE TAKEOVER REGULATION PANEL ?

The Takeover Regulation Panel (the Panel) is established in terms of section 196 of the Companies Act No 71 of 2008 (the Act) as a juristic person. The Panel reports to the Minister of Department of Trade and Industry (the dti). It functions as an organ of state within the public administration, but as an institution outside the public service.

The Panel has jurisdiction throughout the Republic of South Africa; is independent and subject to the Constitution and the law and any policy statement, directive or request issued by the Minister of the dti. The Panel must be impartial and perform its functions without fear, favour or prejudice; and must exercise the functions assigned to it in terms of the Act or any other law, or by the Minister in the outmost cost-efficient and effective manner; and in accordance with the values and principles mentioned in section 195 of the Constitution.

2. MEMBERS OF THE PANEL

- 2.1 Members comprise of:
- Companies Commissioner or his nominee;
 - Competition Commissioner or his nominee;
 - JSE representative; and
 - Other appointees by the Minister of the dti, including the Chairperson and Deputy Chairperson.

- 2.2 The Panel may co-opt additional members for a particular purpose and for a limited period.
- 2.3 The day-to-day regulatory functions of the Panel are undertaken by the Executive Director, Deputy Executive Director and Legal Counsel. They are assisted by the Chief Financial Officer and Administrative staff.

3. FUNCTIONS OF THE PANEL

- 3.1 To regulate affected transactions or offers set in part B and C of chapter 5 of the Act that involve regulated companies.

Regulated companies are:

- a profit company which is a public company;
- a state owned company; and
- a private company, but only if the memorandum of incorporation of the company makes provision for the Panel's authority to apply; or if more than 10% of the issued securities of the company have been transferred within a period of 24 months, immediately before the date of a particular affected transaction or offer;

- 3.2 To investigate complaints relating to Affected Transactions and Offers;

Affected Transactions and Offers Include:

- disposal of all or the greater part of assets or undertaking of a regulated company;
- amalgamations or mergers involving a regulated company;
- schemes of arrangement between a regulated company and its shareholders;
- mandatory offers to shareholders of a regulated company;
- compulsory acquisition of the shares of a regulated company;
- acquisitions of, or announced intention to acquire 5%, 10% or any multiple of 5% of the issued shares of a regulated company; and
- the announced intention to acquire the remaining shares in a regulated company.

3.3 To apply to court for an order to wind up a company in certain circumstances.

3.4 To consult with the Minister of the dti in respect of additions, deletions or amendments to the Takeover Regulations;

3.5 May consult with any person with a view of advising that person on the application of the Act and the Takeover Regulations;

3.6 May issue, amend or withdraw information on current policy dealing with an affected transactions or offer for guidance;

- 3.7 May receive and deal with any representations by parties on any matter in respect of affected transactions or offers; and
- 3.8 May perform any other function assigned to it by legislation.

4. POWERS OF THE PANEL

- 4.1 Require filing for approval of any document in respect of an affected transactions or offers;
- 4.2 May issue a compliance certificate if it is satisfied that the transaction has met the requirements set in the Act.
- 4.3 May initiate or receive complaints, conduct investigations, and issue compliance notices in respect of affected transactions or offers.

The Panel may wholly or partially, and with or without conditions, exempt a party, an affected transaction or an offer from the application of any provision relating to affected transactions or offers if such a transaction or offer meet certain specified requirements.

5. REASONS FOR REGULATING AFFECTED TRANSACTIONS

The Panel must protect shareholders by:

- 5.1 Ensuring integrity of markets and fairness to shareholders during affected transactions;
- 5.2 Ensuring that the necessary information is provided timely to shareholders to make an informed decision during affected transactions;
- 5.3 Preventing action by companies intended to impede, defeat or frustrate affected transactions;
- 5.5 Ensuring that persons undertaking affected transactions are ready, able and willing to implement the transaction;
- 5.6 Ensuring that all shareholders are treated equally and equitably during an affected transaction;
- 5.7 Ensuring that all shareholders receive the same information during an affected transaction, and that no relevant information is withheld to shareholders; and
- 5.8 Ensuring that shareholders are provided sufficient information, and permitted sufficient time to enable them to reach a properly informed decision about an affected transactions.

6. ENFORCEMENT AND COMPLAINTS

- 6.1 The Panel has powers to issue compliance notices where a party entered into an affected transaction or offer without complying with the requirements of the Act.
- 6.2 Failure to comply with a compliance notice issued may result in a regulated company being fined up to 10% of annual turnover by a Court on application by the Panel and may constitute a criminal offence. On prosecution and conviction a Court may order imprisonment for a period of up to 12 months.
- 6.3 Other offences include: providing false information, improperly influencing the Panel or anticipating the findings of the Panel.
- 6.4 Any person with an interest in an affected transactions or offer may lodge a complaint with the Panel against the transaction whereupon the Panel in its discretion may investigate the complaint, and issue a compliance notice where necessary.
- 6.5 The Panel may also issue a compliance certificate if it is satisfied that the transaction has met the requirements set in the Act.

7. APPEALS AND REVIEWS

The Takeover Special Committee

- 7.1 The Takeover Special Committee (TSC) is a committee of the Panel and consists of a Chairperson, who must be an Attorney or Advocate whether practicing or not; and at least two other persons.
- 7.2 The Powers of the TSC are to hear and decide on matters referred to it by the Executive Director of the Panel; and review compliance notices issued by the Executive Director of the Panel.

In exercising its powers and performing its functions the Panel must not express any view or opinion on the commercial advantages or disadvantages of any transaction or proposed transaction.

8. REGULATIONS

The Minister of the dti has published regulations applicable to Affected Transactions and Offers and these are found in Chapter 5 of the Companies Regulation 2011. The regulations provide detailed information to be included in

offer circulars to be sent to shareholders. A quick overview of the regulations shows that they assist the Panel in undertaking its mandate of protecting shareholders during an affected transactions.



N.B: This guide does not replace the need to consult with the Panel and independent advisers before undertaking any affected transaction or offer.





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