



GUIDELINE 1/2011

BANK GUARANTEES AND CASH CONFIRMATIONS

1. INTRODUCTION

- 1.1 In terms of section 201(2)(b) of the Companies Act 71 of 2008 (the Act), the Panel may issue, amend or withdraw information on current policy to serve as Guidelines for the benefit of persons concerned with those transactions regulated by the Panel. Regulation 4 of the Companies Regulation 2011 (the Regulations) provides that a senior officer of a regulatory agency (as defined in the Regulation) may issue a Guideline at any time by publishing a notice of the Guideline to the general public in the Gazette, any generally circulated newspaper on the regulatory agency's website, or by any similar means of providing information to the public generally.
- 1.2 The TRP hereby publish Guideline 1/2011 which is intended to provide guidance to practitioners and regulated companies falling within the regulatory authority of the TRP.
- 1.3 The proposed Guideline deals with Cash Guarantees in terms of Regulations 111(4) and 111(5).
- 1.4 The definitions used in the Act and the Regulations will apply in this Guideline.

2. BANK GUARANTEES AND CASH CONFIRMATIONS

- 2.1. Regulation 111(4) read with Regulation 111(5) requires that when an offer consideration is wholly or partly in cash, the offeror offer circular must include a statement dealing with an irrevocable unconditional guarantee issued by a South African registered bank or an irrevocable unconditional confirmation from a third party that sufficient cash is held in escrow.



2.2 The TRP hereby recommends that guarantees and cash confirmations which conform to Annexures **A-1/2011** and Annexure **B-1/2011** be adopted as complying with the requirements of Regulation 111(4) read with Regulation 111(5).

DATED 19 MAY 2011

A handwritten signature in black ink, appearing to read 'NA Matlala', written in a cursive style.

NA Matlala

Chairperson



ANNEXURE A-1/2011

The Executive Director
Takeover Regulation Panel
1st Floor, Building B
Sunnyside Office Park
32 Princess of Wales Terrace
Parktown
2193

Dear Sir/Madam

BANK GUARANTEE NO.....

1. We, xxxxxxxx Bank Limited, registration number (“**Guarantor**”) having our head office at xxxxxxxxxxxx, provide this cash confirmation in the form of a bank guarantee in accordance with Regulation 111(4) and Regulation 111 (5) of the Companies Regulations and in connection with the proposed offer (“**Proposed Offer**”) by xxxxxxxx, Limited (“xxxxx”), for xxxxxxx or a nominated wholly owned subsidiary of xxxx (in each case to the extent permissible by law and regulation), to acquire the entire issued share capital of xxxxxxxxxxxx Limited (“xxxxxxx”) not already owned by xxxxxxxx from the shareholders of xxxxxxx who accept the Proposed Offer.
2. We understand that should the Proposed Offer be accepted, the consideration payable to the shareholders of xxxxxxxx in terms of the Proposed Offer will be an amount not exceeding Rxxxxxxxxx (“**the Guaranteed Amount**”).
3. In the event that xxxxxxxxi fails to discharge its obligation to make payment to accepting shareholders within the time stipulated in the Proposed Offer document, we, as the Guarantor, agree to do so, subject to compliance with the terms of this bank guarantee.
4. Any claims against this bank guarantee shall be furnished in writing and shall state that, despite being called upon to make payment, xxxxxxxx has failed to make the relevant payment.



5. In order to give full effect to this bank guarantee, the Takeover Regulation Panel shall be entitled to treat the Guarantor as the principal debtor and the obligations of the Guarantor shall not be affected by any variations in the terms and conditions of any other documents.
6. This bank guarantee shall be irrevocable and shall remain in full force and effect until xxxxx 20xx (“**expiry date**”), by which date all claims should have been received at our address and any claims received at the Guarantor’s address after xxxxx 20xx shall not be considered.
7. This bank guarantee is neither negotiable nor transferable.
8. This bank guarantee shall be governed by, and construed in all respects in accordance with, the laws of the Republic of South Africa.

Notwithstanding anything contained herein above:

- our maximum liability under this bank guarantee shall not exceed the aggregate sum of the Guaranteed amount;
- this bank guarantee shall be valid up to the expiry date; and
- we are liable to pay the Guaranteed amount or any lesser amount thereof under this bank guarantee only if you serve upon us a demand as stated above on or before the expiry date, where after it ceases to be in effect and all your rights under this bank guarantee shall be forfeited and we shall be discharged from all liability there under whether or not the original guarantee is returned to us.

For and on behalf of:

For and on behalf of:



Annexure B-1/2011

The Executive Director
Takeover Regulation Panel
1st Floor, Building B
Sunnyside Office Park
32 Princess of Wales Terrace
Parktown
2193

Dear Sir/Madam

CONFIRMATION OF CASH HELD IN ESCROW

We refer to the proposed scheme by xxxxxxxx for xxxxxx shares of xxxx Limited in terms of section 114 of the Companies Act 71 of 2008 as amended (the proposed scheme).

We xxxxxxxx hereby confirm that xxxxxx has sufficient cash resources specifically allocated to meet its obligation in relation to the proposed scheme. The maximum required in terms of the proposed scheme is an amount of Rxxxx (the cash amount) .We confirm that we hold in our trust account a cash amount of R xxxx for and on behalf of xxxxxxxxxx to meet its obligations in terms of the proposed offer.

We further confirm that the cash amount held will only be used for the sole purpose of settling the consideration amount due to the shareholders of xxxxxx Limited in terms of the proposed scheme.

This confirmation is given for the purpose of complying with regulations 111(4) and 111(5) of the Companies Regulations 2011 and is irrevocable.

Yours faithfully