



GUIDELINE 4/2011

GUIDELINE ON SECTION 122 (1) OF THE COMPANIES ACT NO.71 OF 2008

1. INTRODUCTION

1.1 In terms of section 201(2)(b) of 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 Section 122(1) of the Act provides:

“(1) A person must notify a regulated company in the prescribed manner and form within three business days after that person—

(a) acquires a beneficial interest in sufficient securities of a class issued by that company such that, as a result of the acquisition, the person holds a beneficial interest in securities amounting to 5%, 10%, 15%, or any further whole multiple of 5%, of the issued securities of that class; or

(b) disposes of a beneficial interest in sufficient securities of a class issued by a company such that, as a result of the disposition, the person no longer holds a beneficial interest in securities amounting to a particular multiple of 5% of the issued securities of that class.

[Sub-s. (1) amended by s. 76 (a) of Act No. 3 of 2011.]”

Section 117.(1) provides:

“In this Part, Part C and in the Takeover Regulations -

(a).....

(b).....

(c) “affected transaction” means -.....



(iv) the acquisition of, or announced intention to acquire, a beneficial interest in voting securities of a regulated company to the extent and in the circumstances contemplated in section 122(1).”

(f) “offer”, when used as a noun, means a proposal of any sort, including a partial offer, which, if accepted, would result in an affected transaction ”

Section 118(1) provides:

“(1) Subject to subsections (2) to (4), this Part, Part C and the Takeover Regulations apply with respect to an affected transaction or offer involving a profit company or its securities if the company is—

- (a) a public company;*
- (b); or*
- (c) a private company, but only if—*

(i) the percentage of the issued securities of that company that have been transferred, other than by transfer between or among related or inter-related persons, within the period of 24 months immediately before the date of a particular affected transaction or offer exceeds the percentage prescribed in terms of subsection (2); or

[Sub-para. (i) substituted by s. 73 of Act No. 3 of 2011.]

(ii) the Memorandum of Incorporation of that company expressly provides that the company and its securities are subject to this Part, Part C and the Takeover Regulations, irrespective of whether the company falls within the criteria set out in subparagraph (i).”

Section 121 provides:

“Any person making an offer must—

(a) comply with all reporting or approval requirements, whether set out in this Part or in the Takeover Regulations, except to the extent that the Panel has granted the person an exemption from any such requirement; and

(b) not give effect to an affected transaction unless the Panel has—

(i) issued a compliance certificate with respect to the transaction; or

[Sub-para. (i) substituted by s. 75 of Act No. 3 of 2011.]



(ii) granted an exemption for that transaction.”

- 1.3 The Panel recognises that these provisions referred to above may have unintended consequences taking into consideration the purpose and object of the Act and the Regulations. In some instances, it has been interpreted that parties are required to make an offer in compliance with the Act and Part B, Part C and the Takeover Regulations.
- 1.4 The Panel also recognises that it is not practical, nor in the interests of persons dealing in securities to have to comply with the provisions of Section 121(b)(i), when a person wishing to deal in securities, where a threshold prescribed in Section 122(1) may be breached, is obliged obtain a compliance certificate from the Panel prior to such dealing taking place.
2. The Panel hereby publishes a Guideline that, all transactions undertaken in terms of section 122(1) of the Act, are hereby exempted in terms of Section 119 (6) of the Act, from compliance with the provisions of Section 121(b)(i) of the Act, relating to issuing of a compliance certificate. In granting the exemption, the Panel considered the principles and purpose of the Act, and the Regulations the Panel and is of the view that it is reasonable and justifiable to grant the exemption.
3. However, all acquisitions and disposals in terms of section 122(1) are required to comply with the notification requirements of this section.

DATED 19 MAY 2011

NA Matlala

Chairperson