

GUIDELINE 5/2011

INDEPENDENT EXPERTS

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 114 (2)(b) is of particular relevance in determining the independence of the expert. This section provides:

“(2) The company must retain an independent expert, who meets the following requirements, to compile a report as required by subsection (3):

(a) The person to be retained must be—

(i) qualified, and have the competence and experience necessary to—

(aa) understand the type of arrangement proposed;

(bb) evaluate the consequences of the arrangement; and

(cc) assess the effect of the arrangement on the value of securities and on the rights and interests of a holder of any securities, or a creditor of the company; and

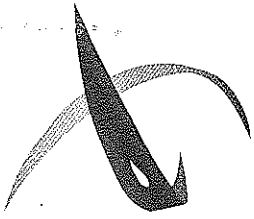
(ii) able to express opinions, exercise judgment and make decisions impartially.

(b) The person to be retained must not—

(i) have any other relationship with the company or with a proponent of the arrangement, such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship;

(ii) have had any relationship contemplated in subparagraph (i) within the immediately preceding two years; or

(iii) be related to a person who has or has had a relationship contemplated in subparagraph (i) or (ii).”



- 1.3 Regulation 90 also indicates which affected transactions, including partial offers, require appointment of an independent expert, as defined. The regulation further provides that section 114 (2) and (3) of the Act applies with respect to any transaction for which an independent expert is required in terms of the Act and the Regulations.

- 2 The Panel hereby publishes a Guideline that:
 - 2.1 in interpreting the above provisions the Panel may regard persons having certain relationships with the offeree regulated company or the offeror, as not appropriate independent experts to provide a fair and reasonable opinion as defined, to the independent board or the offeror, where applicable;

 - 2.2 the following relationships will generally lead the Panel to conclude that the expert is not an appropriate independent expert to provide the fair and reasonable opinion in respect of the relevant offer:
 - 2.2.1 Any relationship in respect of the offer including, but not limited to:
 - 2.2.1.1 a Sponsor relationship in terms of the JSE Listings Requirements with the offeree regulated company or offeror;

 - 2.2.1.2 an auditor and client relationship, or any adviser with either the offeree regulated company or offeror, irrespective of where the auditor/adviser or its related person/s is/are situated; and

 - 2.2.1.3 any other advisory relationship with any offeree regulated company or the offeror.

DATED 12 AUGUST 2011

NA Matlala

Chairperson