



PRACTICE GUIDELINES (SETTING OUT PROCEDURES AND REFLECTING WHAT CONSTITUTES BEST PRACTICE) OF THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

In terms of REG 4 (2)

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These practice directives herald the beginning of the period of assimilating the guiding principles and procedures that would uniquely benefit the Companies Tribunal.

These practice directives engender a sense of responsibility in as far as the adjudicatory functions of the Companies Tribunal are concerned, given its unique statutory mandate as an alternative dispute forum.

It is worth noting with alacrity that these practice directives echo the values and principles of independence, impartiality, accessibility, effectiveness, fearlessness including adjudication without favour and prejudice delineated by Chapter 8 of the Constitution Act 108 of 1996 dealing with Courts and the administration of justice.

I take the liberty to thank the sterling effort(s) of the team headed by Mr Khashane Manamela, ie, the convener of the rules and directives committee composed of Ms Khatija Tootla, Ms Tebogo Mputle, Ms Agnes Maseloanyane and Mr Randal Williams for the seminal job of formalising these practice directives.

Advocate S. M. Lebala SC

Chairperson of the Companies Tribunal

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1. INTRODUCTION

These guidelines have been formulated to assist in providing the overall procedures and best practice when submitting documents to the Companies Tribunal, whether for administrative orders or for hearings.

2. APPLICATION OF THE GUIDELINES

2.1 Parts E and F (Regulations 141 to 162) of Chapter 7 of the Companies Regulations, 2011 (the Regulations) issued by the Minister of Trade and Industry¹ in terms of section 223 of the Companies Act 71 of 2008 (the Act) regulate the initiation and conduct of proceedings before the Companies Tribunal (the Tribunal). The Regulations are significantly similar to the Uniform Rules of Court published in Government Notice R48 of 12 January 1965 (the High Court Rules).

2.2 Regulation 154(1)(b) of the Regulations² permits a member of the Tribunal presiding over a matter to have regard to the High Court Rules in respect of procedural issues not provided for by the Regulations.

2.3 In addition, members of the Tribunal adjudicating upon matters may also give directions in the event of uncertainty as to the practice or procedure to be followed.³ According to section 183 of the Act members of the Tribunal are permitted in terms of section 183 of the Act⁴ to “determine any matter of procedure for an adjudication hearing, with due regard to the circumstances of the case.”

¹ Published under GN R351 in GG 34239 of 26 April 2011.

² For greater certainty, I reference to regulation or regulations or Regulations is/are to the Companies Regulations, 2011, unless specifically stated otherwise.

³ Regulation 154(1)(a).

⁴ Reference to sections is to the sections in the Companies Act 71 of 2008, unless specifically stated otherwise.

2.4 These guidelines support and facilitate the relevant provisions of the Act and the Regulations regarding the initiation and conduct of proceedings before the Tribunal. These guidelines are not intended to replace or amend or modify the contents of the Act and the Regulations, and therefore where the guidelines differ with the Act or the Regulations, the provisions in the Act or the Regulations shall take precedence.

2.5 Subject to 2.4 above, where the guidelines differ with the High Court Rules, the guidelines shall take precedence to the extent that such difference reasonably achieves the purposes of the Act as stated in section 7. The Tribunal is inured to conduct its proceedings informally⁵ and therefore some level of reasonable deviation from the formalities of the High Court Rules may be necessary depending on the circumstances of a matter before the Tribunal.

2.6 The Tribunal is also permitted to condone technical irregularities arising out of any of its proceedings in terms of Regulation 154(3).

2.7 The guidelines are subject to review from time to time.

3. OFFICE HOURS OF THE TRIBUNAL, ISSUING AND FILING OF PROCESS

3.1 Office Hours

⁵ Section 180(1)(b).

The offices of the Tribunal are open to the public from 09h00 to 16h00 Monday to Friday, except on public holidays.

3.2 Issuing and Filing of Documents

3.2.1 At all times applicable, the registrar anticipates all process documents filed including that which initiates proceedings before it and that which proves return of service of such process, to be accompanied by filing sheets intended to have the following details including but not limited to the names, addresses and telephone numbers (where applicable) of the parties filing, initiating proceedings and those to whom process is to be served on and/or has already been served on.

3.2.2 The Tribunal shall accept documents (through the office of the registrar for filing and for initiating (issuing) the Tribunal proceedings between 09h00 and 13h00 and between 14h00 and 15h30 Monday to Friday, except on public holidays.

3.2.3 The Tribunal shall in case of urgent matters as envisaged in 10 below allow issuing and filing of documents at any time during the office hours of the Tribunal as stated in 3.1 above or by prior and reasonable arrangement with the registrar of the Tribunal outside of the Tribunal's office hours.

4. OFFICE OF THE REGISTRAR

4.1 The registrar's functions are as set out in the Regulations. Most of these functions are similar to those performed by a registrar in the High Court. Therefore, the reference registrar will henceforth be employed herein to retain the ordinary meaning of this

functionary and therefore where reference is made to registrar it should be understood as reference to the recording officer in terms of the Regulations.

4.2 The office of the registrar is the interface between the Tribunal and the public. It therefore follows that, members of the public are not to contact presiding members of the Tribunal directly, but through the office of the registrar.

5. COMMUNICATION WITH THE TRIBUNAL

5.1 The Tribunal is a forum of record and therefore all correspondences with the registrar shall be in writing and reflect the case or file number allocated to the matter (if any); the parties; the identity and contact details of the person or person's corresponding with the registrar.

5.2 Where parties are desirous to communicate with a member of the Tribunal in relation to a matter allocated to the member, the parties must address the communication in writing to the Tribunal member via the office of the registrar by referring to the allocated case by name or file number.

5.3 In addition, the communication must be copied and sent to all other parties involved in the matter and proof of such submission must be included in the communication sent to the Tribunal member via the office of the registrar.

6. WHO CAN APPLY FOR RELIEF OR REFER A COMPLAINT TO THE TRIBUNAL?

6.1 General:

6.1.1 Section 157 provides that when an application is made or a matter is brought before the Tribunal, among others, the right to do so may be exercised by various persons, either directly or through representatives or agents including anyone acting in the public interest with leave of the court and/or Tribunal as envisaged by section 38 of the Constitution.

6.1.2 Hereunder - under separate sub-headings - are those persons mentioned in section 157, including non-exhaustive suggestions regarding supporting documents that may be included and submissions may be made, when a person from a particular category of standing approaches the Tribunal for relief.

6.2 A person directly contemplated in the particular provision of the Act, including the Companies and Intellectual Property Commission (the Commission)

Procedure with regard to filing of documents:- :

- the deponent to the affidavit attached to Form CTR 142 under this category must be the person contemplated in the Act or in case of a juristic person or corporate body, a person authorised through a resolution of such juristic person or corporate body to depose to the affidavit;
- in the case of a juristic person or a corporate body, a resolution authorising the application or matter being brought before the Tribunal, should also be included in the papers. This resolution may be contained in the same document as the one reflecting the authority of the deponent referred to above.

6.3 Another person acting on behalf of the person directly contemplated by the Act, where the latter person is unable to act in his/her/its own name

Kindly note the following:-

- the deponent to the affidavit attached to the Form CTR 142 under this category must include in the papers filed, proof of authority to act on behalf of the person directly contemplated in the Act;
- further, there should be submissions in the papers explaining why the person directly contemplated in the Act is unable to act in his/her/its own name.

6.4 A person acting as a member of or in the interest of, a group or class of affected persons, or an association acting in the interests of its members

Kindly note the following:

- the papers filed should state the identity and other details of the interest group, class of affected persons or association and the nature of interest or rights sought to be advanced or protected;
- relevant documentary proof in respect of the above.

6.5 A person authorised by the court to act in the public interest

Kindly note the following:

- a copy of the court order authorising the person to act in the public interest must be included in the filed papers;

- copies of the complete court papers, constituting the court pleadings (and where possible the record or transcript) which resulted in the order, should be made available to the Tribunal upon request.

6.6 Alternative Dispute Resolution

Furthermore, the above persons may in terms of section 166, refer a matter to the Tribunal or an accredited entity or any other person, for resolution through mediation, conciliation and arbitration, as an alternative to applying to court or filing a complaint with the Tribunal in terms of Part D of Chapter 7 of the Act .

7. TYPES OF APPLICATIONS OR COMPLAINT REFERRALS TO THE TRIBUNAL AND ALTERNATIVE DISPUTE RESOLUTION

7.1 General:

7.1.1 Adjudication proceedings before the Tribunal are either by way of application or the filing of a Complaint Referral.

7.1.2 Both of the abovementioned procedures should be on a prescribed form in terms of the Regulations. The procedural steps thereof are substantially similar to the High Court's motion procedure, being firstly an application (on a prescribed Form CTR 142 with a supporting affidavit) or Complaint Referral (on a prescribed Form CTR 140 with a supporting affidavit), followed by an answer (in the form of an affidavit) and thereafter a reply (also in the form of an affidavit), if any. Default orders are

possible, where no response is filed in reaction to the application or Complaint Referral (Regulation 153).⁶

7.1.3 The prescribed forms in respect of alternative dispute resolution (ADR) where a person refers a matter to the Tribunal or to an accredited entity is Form CTR 132.1 and when the Commission or the Takeover Regulation Panel refer a complaint to be resolved by ADR is form CTR132.2.

7.2 Jurisdiction of the Tribunal in respect of Matters

7.2.1 The Tribunal does not review every act or omission of the Commission unless this is specifically provided for in the Act.

7.2.2 The Tribunal is not an alternative forum for matters that in terms of the Act are for the jurisdiction of the High Court.

7.2.3 The Tribunal does not have jurisdiction over matters which should have been brought in terms of the Companies Act of 1973 (the old Act) or the Close Corporations Act 69 of 1984 as the Act does not have retrospective application.

7.2.4 In addition to any other matter that the Tribunal may have jurisdiction over, the Tribunal specifically has jurisdiction in respect of the following matters, discussed further under 8 below:

7.2.4.1 exemptions in terms of section 2(3) (related and inter-related persons); 7.2.4.2 exemptions in terms of section 6(2) (anti-avoidance, exemptions and

⁶ This is dealt with further under paragraph 11 below.

substantial compliance);

- 7.2.4.3 determination orders regarding registration of company names and defensive names in terms of section 160, read together with sections 11, 12 or 14;
 - 7.2.4.4 administrative orders regarding alterations of Memorandum of Incorporation in terms of sections 17;
 - 7.2.4.5 administrative orders for extension of period for convening an annual general meeting in terms of section 61(7);
 - 7.2.4.6 administrative order for convening an annual general meeting in terms of section 61(11)(b);
 - 7.2.4.7 removal of directors in terms of section 71(8) where there are fewer than three directors;
 - 7.2.4.8 exemptions from appointment of a social and ethics committee in terms of section 72;
 - 7.2.4.9 review of a notice by the Commission in respect of the appointment of a company secretary, auditor or audit committee and assessment of costs by the Commission for convening a meeting with regard to the appointment of a company secretary, auditor or audit committee in terms of section 84;
 - 7.2.4.10 conducting alternative dispute resolution envisaged in terms of section 156, read together with sections 166, 167 and 169(1)(b). In terms of section 166, persons stated under part 6 of these guidelines above, may refer matters to the Tribunal or an accredited entity or any other person, for resolution through mediation, conciliation and arbitration, as an alternative to applying to court or filing a complaint with the Commission in terms of Part D of Chapter 7 of the Act.
 - 7.2.4.11 dealing with complaints and resolving matters through consent orders in terms of section 170, and
- 7.2.5 review of compliance notices issued by the Commission in terms of section 172.

8. SPECIFIC ASPECTS OF APPLICATIONS OR REFERRALS BEFORE THE TRIBUNAL

8.1 Exemptions in terms of section 2(3) (related or inter-related persons)

8.1.1 When an individual or a juristic person is related to another individual or a juristic person as stated in section 2(1), but can show that with regard to the particular matter arising in terms of the Act there is sufficient evidence to conclude that he/she/it acts independently of the related or inter-related person, he/she/it may be exempted from an application of the particular provision of the Act.

8.1.2 For example, section 94(4)(c) provides that a member of an audit committee of a company must not be related to a prescribed officer or a full-time employee of the particular company. However, where an application which satisfies the requirements of section 2(3) is made, the Tribunal, among other forums, may grant an exemption from application of section 94(4)(c).

8.1.3 Where an application for exemption in terms of section 2(3) is made by another person on behalf of the person directly affected, the applicant should have considered what is stated under 6.3 above and there should be written confirmation, preferably in the form of a confirmatory affidavit, by the latter person in respect of the relief sought in the application.

8.1.4 The following documents should be included in the application:

- Form CTR 142;

- sworn statement or affidavit setting out the facts on which the application for an exemption is based;
- any relevant documentary proof of independence from the related or inter-related person, and
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body, for example a resolution of the board of directors .

8.2 Section 6(2) Exemptions (anti-avoidance, exemptions and substantial compliance)

8.2.1 The Tribunal may on application make an administrative order exempting an agreement, transaction, arrangement, resolution, or provision from a Memorandum of Incorporation of a company or company's rules from any prohibition or requirement arising out of an unalterable provision of the Act (other than a provision within the jurisdiction of the Takeover Regulation Panel).

8.2.2 Section 6(3) sets out further requirements for the Tribunal to make an administrative order.

8.2.3 The following documents should be included in the application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for an exemption is based;
- certified copies of the agreement, transaction, arrangement or resolution;
- a copy of the Memorandum of Incorporation of a company or company's rules as filed with the Commission;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body.

8.3 Determination Orders regarding registration of company names and defensive names in terms of section 160, read together with sections 11, 12 or 14

8.3.1 The Tribunal may make a determination order regarding whether a registered company name or reserved company name, including a defensive name, satisfies the requirements of or is consistent with the requirements of the Act or not.

8.3.2 The following documents should be included in the application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for a determination in respect of a registered company name or reserved company name or a defensive name is based;
- extracts from the records⁷ of the Commission reflecting the registered or reserved company name or defensive name; the registered office address of the respondent company and its principal business;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body, and
- proof of service of the application on all interested parties in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.3.3 Where an administrative order directing the Commission in terms of section 160(3)(b)(i) is sought, the Commission should be cited as a party to the

⁷ When relying on records kept by third party source other than the Commission, there should be an averment under oath confirming that such records are the same as those kept by the Commission.

proceedings and also be served with the papers. This is not necessary where the applicant is applying for an order in terms of section 160(3)(b)(i).

8.4 Administrative Orders regarding alterations of Memorandum of Incorporation in terms of sections 17

8.4.1 The board of directors of a company may alter or authorise an individual to alter the Memorandum of Incorporation of the company or the company's rules in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation or the company's rules.

8.4.2 Section 17(1) only deals with amendments specified above and other kind of amendments are catered for elsewhere in the Act.

8.4.3 However, the Commission, director or a shareholder of the company may apply to the Tribunal for an administrative order setting aside a published notice of alteration on the grounds that the alteration exceeds authority to correct a patent error or defect as contemplated in section 17(1).

8.4.4 The following documents should be included in the application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for an administrative order to set aside a published notice is based;
- copy of the published notice of alteration;

- a copy of the company's Memorandum of Incorporation or company's rules as filed with the Commission;
- proof of shareholding where the application is by a shareholder of the company;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body, and
- proof of service of the application on all interested parties in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.5 An administrative order for an extension of a period for convening an annual general meeting in terms of section 61(7)

8.5.1 The Tribunal may on good cause shown extend the time for convening an annual general meeting of the shareholders of a public company (section 61(7)).

8.5.2 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for extension of a period for convening an annual general meeting is based;
- a copy of the company's Memorandum of Incorporation as filed with the Commission;
- proof of authority to act on behalf of the company, and
- proof of service of the application on interested parties, if any, in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.6 Administrative order for convening of an annual general meeting in terms of section 61(11)(b)

8.6.1 When a company is unable to convene a shareholders meeting required in terms of section 61, due to not having any directors or because all of its directors are incapacitated, a shareholder may request the Tribunal to issue an administrative order for a meeting to be convened on a date and terms set by the Tribunal.

8.6.2 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for convening an annual general meeting is based, including details in respect of the company not having directors or all of its directors being incapacitated, as the case may be;
- a copy of the company's Memorandum of Incorporation as filed with the Commission;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body;
- documentary proof of shareholding or full details in this regard in the absence of documentary proof, and
- proof of service of the application on interested parties, if any, in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.7 Removal of directors in terms of section 71(8) where there are fewer than three directors

8.7.1 In a company with less than three directors, the one director or a shareholder of the company, may apply to the Tribunal for removal of a director or the other director on grounds that the particular director has become ineligible or disqualified in terms of section 69 (other than section 69(8)(a)) or is incapacitated to the extent of being unable to perform his/her director's functions and is unlikely to regain capacity within a reasonable time or has neglected or been derelict in the performance of his/her director's functions.

8.7.2 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for the removal of the director is based, including grounds for the removal as envisaged in the Act and details thereof;
- extracts from the records⁸ of the Commission confirming that there are less than three directors in the company;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body;
- documentary proof of shareholding or full details in this regard where the applicant is a shareholder. In case of the application being by a director of the company, the extracts from the records of the Commission referred to above should also reflect the applicant as a director of the company or an explanation offered why the applicant director's name is not reflected.

⁸ When relying on records kept by third party source other than the Commission, there should be an averment under oath confirming that such records are the same as those kept by the Commission.

- proof of service of the application on all interested parties in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.8 Exemptions from appointment of a social and ethics committee in terms of section 72

8.8.1 State owned companies, listed public companies or any company with a public interest score of above 500 points in any of two of the previous five years, should appoint a social and ethics committee, unless it is a subsidiary of another company with a social and ethics committee which would also perform this function for the subsidiary company or the company has been exempted from the requirement to appoint a social and ethics committee.

8.8.2 Therefore, where a company is a subsidiary of another company with a social and ethics committee which would perform the requisite functions on behalf of the subsidiary company, no application for exemption is necessary. Even if an application for an exemption is made in this instance, it would not result in the Tribunal granting an exemption as none is possible under the provisions of the Act, but an *ex lege* exclusion of the qualifying subsidiary company.

8.8.3 Where an exemption is necessary, the application for an exemption should comply with the provisions of section 72(5).

8.8.4 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for an exemption is based;

- a copy of the company's Memorandum of Incorporation as filed with the Commission;
- where application is based on section 72(5)(a) documentary proof of "some form of formal mechanism within its [i.e. the applicant company's] structures" which will substantially perform a social and ethics committee function or full details thereof should be furnished, including full reference to the other legislation requiring such formal mechanism;
- proof of authority where the deponent is acting on behalf of a juristic person or corporate body, and
- proof of service of the application on interested parties, if any, in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.9 Review of a notice by the Commission in respect of the appointment of a company secretary, auditor or audit committee and assessment of costs for convening a meeting for the appointment in terms of section 84.

8.9.1 The Commission is entitled upon failure of a company to respond satisfactorily to a notice by the Commission calling the company to appoint a company secretary, auditor or audit committee to convene such a meeting for the company. The Commission is thereafter also entitled to make a *pro rata* assessment of costs for convening the meeting and recover the costs from a director who knowingly permitted the company to fail to make the appointment.

8.9.2 A company or a director may approach the Tribunal to set aside the notice or the assessment or part of it.

8.9.3 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for the setting aside of the notice or assessment or part thereof is based;
- copy of the notice by the Commission or the costs assessment;
- a copy of the company's Memorandum of Incorporation as filed with the Commission;
- proof of authority of the deponent acting on behalf of the company and a resolution of the company for the initiation of the proceedings before the Tribunal, and
- proof of service of the application on interested parties, if any, in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

8.10 Mediation, conciliation and arbitration (Alternative Dispute Resolution) in terms of section 166

8.10.1 In terms of section 166, persons stated under paragraph 6 above (section 157(1)) as capable of making applications or referral, among other forums, to the Tribunal), may opt to refer the same matters to the Tribunal or an accredited entity or any other person, for resolution through mediation, conciliation and arbitration (Alternative Dispute Resolution or ADR), as an alternative to applying to the Tribunal, the court or filing a complaint with the Commission in terms of Part D of Chapter 7. The Act provides a framework for ADR through sections 166, 167 and 169.

- 8.10.2 Forms CTR 132.1 and CTR 132.2 are to be used for application and referral for ADR, respectively.
- 8.10.3 After assisting to resolve a dispute, the Tribunal or an accredited entity may issue an order, which if the parties to the dispute consent, may be submitted to the court for confirmation as a consent order.
- 8.10.4 When the Tribunal or an accredited entity concludes that a party to the dispute is not participating in good faith or that there is no reasonable probability of the parties resolving their dispute through that process, the Tribunal or an accredited entity, may issue a certificate on Form CTR 132.3 stating that the process has failed (section 166(2)).
- 8.10.5 A practice directive or guideline specifically dealing with ADR will be published by the Tribunal.
- 8.11 Dealing with complaints and resolving matters through consent orders in terms of section 170
- 8.11.1 The Commission and the Takeover Regulation Panel may conduct an investigation in terms of section 169 and refer a complaint arising therefrom to the Tribunal for adjudication, where the Tribunal has jurisdiction.
- 8.11.2 Form CTR 140 is used by the Commission and the Takeover Regulation Panel when making a referral and regulation 140(3) must be complied with in this regard.

8.12 Review of compliance notices issued by the Commission in terms of section 172.

8.12.1 A person issued with a compliance notice by the Commission may in terms of section 172 apply to the Tribunal for a review of such notice within 15 days of receiving such notice or within such longer time allowed by the Tribunal on good cause shown by the applicant.

8.12.2 The following documents should be included in this application:

- Form CTR 142;
- sworn statement or affidavit setting out the facts on which the application for a review of the Commission's notice is based;
- copy of the compliance notice by the Commission;
- a copy of the company's Memorandum of Incorporation as filed with the Commission;
- proof of authority of the deponent acting on behalf of the company and a resolution of the company for the initiation of the proceedings before the Tribunal, and
- proof of service of the application on interested parties, if any, in any of the methods stated in Table CR3 of Annexure 3 of the Regulations.

9. CONDONATION

9.1 A party issuing or serving a document late or out of time, must apply on Form CTR 147 for condonation explaining the reasons for the late issuing or serving in an affidavit,

before the document in respect of which the condonation application is sought is accepted as being a valid step in the proceedings.

9.2 The presiding member of the Tribunal may direct that, argument be heard regarding the condonation before the document is accepted as being a valid step in the proceedings.

10. URGENT APPLICATIONS

10.1 It should be noted that, there is no specific provision in the Regulations for exchange of the papers or convening the subsequent hearing on an urgent basis.

10.2 However, the Tribunal may in terms of regulation 147 upon request based on satisfactory grounds, reduce the time periods for filing a document. This may effectively amount to the Tribunal adjudicating upon a matter on an urgent basis.

10.3 The Tribunal would, among others, have regard to the practice and authorities as applied in other forums, including the High Court.

10.4 Form CTR 147 is to be used for request for the reduction and /or extension of the time periods as it is also used for condonation for late filing of documents discussed under 9 above.

10.5 The application should clearly state the relief sought; grounds of urgency and include submissions and documents as recommended under 8 above for the particular application or referral.

11. DEFAULT ORDERS

- 11.1 In terms of Regulation 153, an order by default may be granted by the Tribunal upon application by the initiating party or applicant after the prescribed time period has lapsed for filing a response to the initiating document or application.
- 11.2 The application for a default order should be served unless directed otherwise by the Tribunal.
- 11.3 The following documents should be included in the application, together with Form CTR145:
- Sworn statement or affidavit addressing, among others, what is envisaged in terms of regulation 153(1);
 - Proof of service of the application for a default order on all interested parties in any of the methods stated in Table CR3 of Annexure 3 of the Regulations, if so directed by the Tribunal.
 - Copy of the initiating document (i.e. the process in respect of which there was no response) together with all attachments as recommended under 8 above, including proof of service thereof.

12. PAGINATION, INDEXING, BINDING AND GENERAL PREPARATION OF PAPERS

- 12.1 The initiating party must within 10 days after the completion of file in terms of regulation 146 furnish the registrar with an index of all documents filed with the Tribunal.

- 12.2 Should the initiating party fail to furnish an index within the time period stated in 12.1 above, the respondent and in case there being more than one, any of the respondents, must within 5 days from the time period stated in 12.1 above, furnish the registrar with an index of all documents filed with the Tribunal.
- 12.3 The registrar may notwithstanding the above request direct any party to the proceedings to furnish an index of all the documents filed with the Tribunal.
- 12.4 The registrar shall attend to the pagination of the documents in terms of the index, except that where deemed reasonable to do so and depending on the volume of papers in the matter, the registrar may request any party to the proceedings to attend to the pagination of the documents filed with the Tribunal in terms of the index prepared. .
- 12.5 When a matter is to be adjudicated upon by a panel, the registrar may request that additional copies of the documents – not exceeding three – be furnished by the parties. These documents must also be paginated following the initial order of pagination from the main application.

13. POSTPONEMENTS AND WITHDRAWALS

- 13.1 Postponement of a hearing of the Tribunal and withdrawals of matters are in terms of regulation 148. This regulation requires that where parties agree on a postponement of a hearing the initiating party must notify the registrar as soon as possible.
- 13.2 The Tribunal requires that, where the notifications in the case of postponements and withdrawals are not made more than 5 days before the date of hearing, the hearing will

proceed as scheduled unless ordered otherwise by the Tribunal. The initiating party may withdraw all or part of the matter at any time before the Tribunal has determined the matter.

13.2.1 The notice of withdrawal should be served on each party and filed with the registrar, including proof of service thereof in terms of regulation 148(1)(a) and (b).

13.2.2 The notice of withdrawal may include a consent to pay costs and if no agreement is reached in this regard, the Tribunal will determine an appropriate order as to costs on application by a party.

13.2.3 Where no consent to pay the costs is made by the party withdrawing or postponing a matter, the other party may apply to the Tribunal for an appropriate order as to the costs.

14. DELIVERY AND RESERVATION OF DECISIONS

14.1 The Tribunal is required in terms of section 180(1)(a) to conduct its adjudication proceedings expeditiously and in accordance with the principles of natural justice. Further, decisions of the Tribunal are to be in writing and include reasons for the decision (section 195(5)).

14.2 The responsibilities in 14.1 above, should be equitably balanced. Therefore, the requirement for expeditious adjudication should not be met at the expense of a well-reasoned and formulated decision and the converse is also correct. The axiom justice delayed is justice denied, is apposite here:.

- 14.3 Presiding members of the Tribunal bear the responsibility regarding delivery of their decisions within a reasonable time after conclusion of hearings. This will obviously depend on the circumstances of each matter regarding volume of paper work and the complexities thereof.
- 14.4 To ensure fully accountability regarding this, the initiating party must, where the Tribunal has delayed making an order in a matter after a hearing, within 5 days from date of completion of a hearing, furnish the details of the matter to the registrar of the Tribunal.
- 14.5 The registrar must keep full records of all matters in which orders are reserved and furnish such records, upon request, to the Chairperson or any member of the Tribunal designated by the Chairperson for this purpose.
- 14.6 Where no date for delivery of the order was stated by the Tribunal, the parties are entitled after a period of one month to enquire in writing from the registrar when the reserved orders will be delivered.

15. SERVICE DELIVERY STANDARDS

- 15.1 The Tribunal reserves the right to adjust the time periods in terms of delivery of its services in order to align its service delivery standards for the benefit of a good service delivery to the public.
- 15.2 The Tribunal's service standards are contained in its service improvement charter which is available upon request and could also be accessed on the website. The Companies Tribunal reserves the right to amend its timeframes.

16. REPRESENTATION AND DRESS CODE BEFORE THE TRIBUNAL

- 16.1 Regulation 157 provides that, parties may be represented when appearing before the Tribunal.
- 16.2 Although not specified, the representation doesn't appear to be limited to legal representatives. However, any person appearing on behalf of another would have to satisfy the Tribunal of the validity of his or her mandate and the nature of the representative capacity.
- 16.3 The Tribunal is cloaked with discretion to conduct its proceedings informally. However, the Tribunal is a forum as envisaged in section 34 of the Constitution of the Republic of South Africa Act, 1996 and therefore those appearing before it must be dressed in a way that exhibits the appropriate decorum of this forum.
- 16.4 The dress code for parties, representatives or witnesses appearing before the Tribunal is formal attire. To be specific no gowns and/or court regalia are prescribed for the Tribunal.