



**ARBITRATION RULES OF THE COMPANIES TRIBUNAL
OF SOUTH AFRICA**

Effective from: 01 September 2022

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1. INTRODUCTION

- 1.1 The Companies Tribunal (hereafter referred to as the Tribunal), established in terms of section 193 of the Companies Act, 2008 (Act No. 71 of 2008) (hereafter referred to as the Act), is an independent administrative tribunal whose Members are appointed by the Minister (as defined in section 1 of the Act) in terms of section 194 of the Act.
- 1.2 The Tribunal consists of a chairperson and not less than 10 other Members appointed by the Minister either on a full-time or part-time basis (section 193(4) of the Act).
- 1.3 The functions of the Tribunal or a Member of the Tribunal include adjudication of applications made to the Tribunal in terms of the Act; participate in alternative dispute resolution as contemplated in Part C of Chapter 7 of the Act, and perform other functions assigned to the Tribunal in terms of the Act (section 195 of the Act).
- 1.4 Section 166 of the Act provides for a person, who would be entitled to apply for relief to court or filing a complaint with the Companies and Intellectual Property Commission (hereafter the Commission), as an alternative, to refer the matter or complaint involved, among others, to the Tribunal for resolution by mediation, conciliation or arbitration.
- 1.5 This document provides rules of procedure relating to resolution of disputes by the Tribunal through arbitration (hereafter referred to as these Rules): provided that where these Rules are silent, the Tribunal or the Presiding Member may give directions on how to proceed and may have regard to the rules of the High Court.
- 1.6 These rules are intended to facilitate cost effective arbitrations to be conducted in the Tribunal. They should not be seen as prescriptive, but rather as guidelines which may, and should be, modified when such modifications will expedite the arbitration process.

2. DEFINITIONS

- 2.1 In these Rules unless the context clearly indicates to the contrary the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions shall bear corresponding meanings-
- 2.1.1 **“Agreement”** means the written arbitration agreement entered into between the parties and this shall include an arbitration clause which provides for arbitration of disputes arising from the agreement signed by the parties;
- 2.1.2 **“Applicant”** means a person who submits an application to the Tribunal in terms of the Act, provided that the Applicant shall have the same meaning as “initiating party” in the case of “the Application”;
- 2.1.3 **“Application”** or **“apply”** means an application filed with the Tribunal by a party seeking to have a dispute with another person or with other persons resolved by way of arbitration as provided for in section 166 of the Act read with regulation 132 of the Regulations and these Rules;
- 2.1.4 **“Answer”** means a document as described in Rule 4.3 and filed by a Respondent;
- 2.1.5 **“Award”** means an award made by a Member or the Tribunal regarding the outcome of an arbitration;
- 2.1.6 **“arbitration”** means proceedings before the Tribunal envisaged in section 166 of the Act, regulation 132 of the Regulations and these Rules, in which a Member of the Tribunal acts as an Arbitrator;
- 2.1.7 **“Arbitrator”** means a Member of the Tribunal when presiding over an arbitration;
- 2.1.8 **“Certificate”** Certificate means the certificate referred to in section 166(2) of the Act;
- 2.1.9 **“Chairperson”** means a person appointed as the chairperson of the Tribunal or any person performing the functions of such person;
- 2.1.10 **“claim”** means any relief that is claimed by any party against any other party and shall include a counterclaim as and when same is filed;
- 2.1.11 **“Commission”** means the Companies and Intellectual Property Commission established in terms of section 185 of the Act;
- 2.1.12 **“Companies Act”** or **“the Act”** means, the Companies Act, 2008 (Act No. 71 of 2008), as amended from time to time;
- 2.1.13 **“Companies Regulations”** or **“the Regulations”** means Companies Regulations, 2011 or any other regulations determined by the Minister in terms of section 223 of the Act and published from time to time to be used in conjunction with the Act;
- 2.1.14 **“Companies Tribunal”** or **“the Tribunal”** means the Companies Tribunal established in terms of section 193 of the Act, includes one or more Members acting as arbitrators in an arbitration;
- 2.1.15 **“Complaint”** means -
- 2.1.15.1 a matter that has been submitted to the Commission or Panel in terms of section 168(1) of the Act;
- 2.1.15.2 a matter initiated by the Commission or Panel in terms of section 168(2) of the Act; or
- 2.1.15.3 a matter that the Minister has directed the Commission or Panel to investigate, in terms of section 168(3) of the Act;
- 2.1.16 **“Consent Order”**; means consent order contemplated in section 167 of the Act;
- 2.1.17 **“counterclaim”** means any relief that is claimed by any Respondent or a party opposing a claim instituted by any Applicant;
- 2.1.18 **“court”** or **“the court”** means the High Court of South Africa, or any court established or recognized by section 166 of the Constitution of the Republic of South Africa, 1996, (Act 108 of 1996) as the context may indicate;

- 2.1.19 “**Day**” means any day other than a Saturday, a Sunday or a public holiday;
- 2.1.20 “**Deliver**” or “**delivery**” means delivery by hand and/or by facsimile and/or by mail and/or by e-mail to a party at the address or addresses chosen by that party and notified by him in writing to the Tribunal and the other party and a party may vary such addresses from time to time by notification by him in writing to the Tribunal and the other party and “**physically deliver**” shall mean to physically deliver a document to the party indicated by the context;
- 2.1.21 “**e-mail**” means electronic mail or sending a document or communication by electronic mail;
- 2.1.22 “**effective date**” means the date set by the Chairperson as the date of coming into operation of these Rules;
- 2.1.23 “**file**” means to furnish an original document (or an electronic copy where allowed by these Rules) to the registrar;
- 2.1.24 “**High Court**” means the High Court of South Africa as defined in section 1 of the Superior Courts Act, 2013 (Act No. 10 of 2013);
- 2.1.25 “**initiating document**”, depending on the context, means either the Application or the Referral;
- 2.1.26 “**initiating party**” means-
- 2.1.26.1 in the case of the Referral, the Commission or the Panel, or other person referred to in Rule 4.2;
- 2.1.26.2 in the case of the Application, means the party who referred the matter to the Tribunal in terms of section 166 (1), read with regulation 132; or
- 2.1.26.3 in any other proceedings before the Tribunal, means the Applicant;
- 2.1.27 “**intervening party**” means any person who has been granted standing to participate in particular proceedings before the Tribunal in terms of section 181(c) of the Act, read with regulation 159 of the Regulations;
- 2.1.28 “**Member**” means a person appointed as a member of the Tribunal in terms of section 194 of the Act;
- 2.1.29 “**Panel**” means the Takeover Regulation Panel, established by section 196 of the Act;
- 2.1.30 “**pleading**” means documents comprising a statement of claim, request for arbitration, a statement of defence, a counterclaim and a statement of defence to a counterclaim;
- 2.1.31 “**Presiding Panel**” means two or more Members of the Tribunal designated to preside over particular arbitration proceedings;
- 2.1.32 “**Presiding Member**” means the member of the Tribunal designated by the Chairperson to preside over particular arbitration proceedings;
- 2.1.33 “**Referral**” means the complaint referred to the Tribunal in terms of section 169(1)(b) of the Act to be resolved through arbitration under section 166 of the Act, regulation 132 of the Regulations and these Rules;
- 2.1.34 “**Registrar**” means the person appointed by the Tribunal to perform the administrative functions conferred upon her under these Rules and the Regulations, and shall perform the same function as a “recording officer”, as defined in regulation 2(d) of the Regulations;
- 2.1.35 “**Reply**” means a document as described in Rule 4.4 and filed by an initiating party in response to the Answer;

- 2.1.36 “**Response**” means a document as described in Rule 4.3 and filed by a Respondent;
- 2.1.37 “**Respondent**” means the person against whom the relief is sought or against whom the Application or the Referral is initiated;
- 2.1.38 “**Rules**” means these arbitration rules and unless the context indicates otherwise words and phrases in the Rules shall bear the same meanings assigned to them in the Act and/or the Regulations;
- 2.1.39 “**Serve**” or its cognate, “**Service**” means to deliver or send a copy/copies of a document(s) to all parties as provided for in these Rules;
- 2.1.40 “**Sheriff**” means a person appointed in terms of section 2 of the Sheriff’s Act, 1986 (Act 90 of 1986), and includes a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively.

3. SCOPE OF APPLICATION

- 3.1 These Rules apply in the following instances:
 - 3.1.1 where a party entitled to apply for relief to court or filing a complaint with the Commission, as an alternative and in terms of section 166 of the Act, intends to refer a matter or complaint involved, among others, to the Tribunal for resolution by arbitration;
 - 3.1.2 where parties have agreed that disputes between them involving the provisions of the Act shall be referred to arbitration, and
 - 3.1.3 where the provisions of the Act and/or the Regulations renders these Rules applicable.
- 3.2 Without limiting the generality of 3.1 hereof, these Rules shall govern the arbitration before the Tribunal, save except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- 3.3 These Rules are effective from the 1st day of September 2022 and shall apply to arbitration initiated after this date, save where parties to the arbitration agree in writing that these Rules should find application to arbitration initiated before the effective date.

4. COMMENCING THE ARBITRATION

4.1 Manner and time periods for delivery of pleadings, documents and other notifications

- 4.1.1 All pleadings and notifications, including their annexures, shall be delivered in typed form with an original filed with the registrar, and copies for each party and for the Presiding Member or each member of the Presiding Panel: provided that the Tribunal may direct that copies should be delivered electronically.
- 4.1.2 Service of the Application or the Referral on a Respondent shall be in terms of the methods and times for the delivery of documents listed in Table CR 3 of Annexure 3, in terms of regulation 7 of the Regulations. Service of other documents subsequent to the Application or the Referral shall be effected at the address designated by the party for purposes of service of documents on such party.
- 4.1.3 Filing with the Tribunal shall be by physically delivering the original of a document at the address of the Tribunal: provided that the Tribunal may direct what method of delivery of the document is to be used by a person, where physical delivery of the document is deemed to be less efficient and/or impossible.
- 4.1.4 The date and time of delivery of documents shall be reckoned in terms of Table CR 3 of Annexure 3 of the Regulations, read with regulation 7 of the Regulations.

4.2 Application or Referral for Arbitration

- 4.2.1 A party in dispute with another party seeking to resolve the dispute by way of arbitration as provided in section 166 of the Act read with regulation 132 of the Regulations and these Rules may apply for arbitration by filing with the Tribunal a duly completed Form CTR 132.1 (the Application).
- 4.2.2 The Commission or the Panel, having considered the complaint, may refer a Complaint to the Tribunal in terms of section 169(1)(b) of the Act to be resolved by way of arbitration as provided in section 166 of the Act read with regulation 132 of the Regulations and these Rules by filing with the Tribunal a duly completed Form CTR 132.2 (the Referral).
- 4.2.3 The Referral by the Commission or the Panel under Rule 4.2.2 of these Rules shall be accompanied by a written recommendation that the parties involved in the Complaint or dispute wish to attempt to resolve it through arbitration, as envisaged in section 166 of the Act.
- 4.2.4 The Application under Rule 4.2.1 of these Rules or the Referral under Rule 4.2.2 of these Rules must be filed with the Registrar and served on each respondent within 5 (five) business days after it is filed. Proof of service must be filed with the Registrar within 5 (five) business days after service on all Respondents.
- 4.2.5 Service of the Application or the Referral on a Respondent shall be in terms of the methods and times for the delivery of documents listed in Table CR 3 of Annexure 3, in terms of regulation 7 of the Regulations.
- 4.2.6 The date on which the Referral or the Application is received by the Registrar shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

- 4.2.7 The Application or the Referral shall include the following:
- 4.2.7.1 an Agreement to arbitrate between the parties and the Agreement must be signed by both parties and the initiating party must include a copy of the Agreement to arbitrate;
 - 4.2.7.2 the Application shall be filed by duly completing Form CTR 132.1 and furnishing all required information thereon, including the initiating party's full names, registration or identity numbers, description, street address, e-mail address (if available), and other contact details;
 - 4.2.7.3 where the initiating party has appointed a representative in terms of Rule 6, additionally to providing information stated in 4.2.7.2 above, the following information must be furnished regarding the representative: full names, registration or identity numbers, street address, e-mail address (if available), and other contact details;
 - 4.2.7.4 the Referral shall be filed by duly completing Form CTR 132.2 and furnishing all required information thereon, including the full names, registration or identity numbers, street address, e-mail address (if available), and other contact details of the Complainant and Respondent;
 - 4.2.7.5 a supporting affidavit setting out the facts on which the application is based or the circumstances of the dispute giving rise to the Complaint or dispute, including the following:
 - a) the basis of the Application, stating the section of the Act or the Regulations in terms of which the Application or Referral is made;
 - b) indicate the order sought from the Tribunal;
 - c) copies of all documents relied upon for the order sought from the Tribunal;
 - 4.2.8 The Application or the Referral may include such other documents or information as considered appropriate or as may contribute to the efficient resolution of the dispute;
 - 4.2.9 The Registrar may direct a party initiating proceedings to address specified concerns in order to ensure that the Application or the Referral reasonably complies with these Rules.

4.3 Answer

- 4.3.1 A party served with the Application or the Referral, seeking to oppose the Application or the Referral shall within 20 business days after such service:
 - 4.3.1.1 serve a copy of an Answer on the initiating party, which must include the person's full names, registration or identity numbers, description, street address, e-mail address (if available), and other contact details: provided that where such person has appointed a representative in terms of Rule 6, additionally to providing such person's information, the following information must be furnished regarding the representative: full names, registration or identity numbers, street address, e-mail address (if available), and other contact details; and
 - 4.3.1.2 file the Answer with proof of service on the initiating party to the Tribunal.

- 4.3.2 A party served with the Application or the Referral, opposing the Application or the Referral shall within 10 business days serve on the initiating party and file with the Tribunal, who does not wish to participate in the arbitration, shall file detailed reasons for such.
- 4.3.3 A party served with the Application or the Referral who does not file reasons for not participating in the arbitration, shall upon expiry of 20 business days after being served with the Application or Referral be deemed to be in default with regard to opposing the Application or Referral.
- 4.3.4 A Response must be in the form of an affidavit, setting out in numbered paragraphs:
 - 4.3.4.1 a concise statement of the grounds on which the Application or the Referral is opposed;
 - 4.3.4.2 the material facts or points of law on which the Respondent relies; and
 - 4.3.4.3 an admission or denial of each ground, and of each material fact relevant to each ground, set out in the Application or the Referral.
- 4.3.5 A response must include copies of all documentation relied upon by the Respondent in support of facts and contentions raised.
- 4.3.6 An allegation of fact set out in the Application or the Referral that is not specifically denied or admitted in an Answer must be regarded as having been admitted.
- 4.3.7 A Respondent who had failed to deliver a Response within the period of 20 business days referred to in Rule 4.3.1, in the event that the Answer is eventually filed late, shall include an application for condonation for non-compliance with these Rules showing good cause why the late delivery of the Answer should be condoned.
- 4.3.8 In the event that a Response filed includes a Counterclaim such Counterclaim shall *mutatis mutandis* comply with Rule 4.1.7.2.1 and Rule 4.1.8. The provisions of this Rule 4.2 shall *mutatis mutandis* apply to the delivery of an Answer to the Counterclaim and condonation for noncompliance with these Rules regarding the delivery of an Answer to the Counterclaim or extension of time to file an Answer to the Counterclaim.

4.4 **Reply**

- 4.4.1 The initiating party or a person served with a Response may within 15 business days after such service, serve a copy of a Reply on the other parties to only address issues raised on the Answer which were not addressed in the Application, the Referral or the Counterclaim, provided that a Reply should not be filed only to address a point of law.
- 4.4.2 A Reply must be in the form of an affidavit, setting out in numbered paragraphs:
 - 4.4.2.1 admissions or denials of each new ground or material fact raised in the Answer; and
 - 4.4.2.2 the position of the replying party on any point of law raised in the Answer.
- 4.4.3 If no Reply is filed, the initiating party or the person concerned will be deemed to have denied each new issue raised in the Answer, and each allegation of fact relevant to each of those issues.

- 4.4.4 An initiating party or the person concerned who had failed to deliver a Reply within the period of 15 business days referred to in Rule 4.3.1 must include in the Reply an application for condonation for non-compliance with these Rules showing good cause why the late delivery of the Reply should be condoned.
- 4.4.5 The Tribunal may in its discretion allow the filing of further affidavits. Without limiting the generality of the aforesaid discretion, the Tribunal may allow the filing of further affidavits where a party has joined an issue and alleged a new matter.

4.5 Closure or completion of exchange of documents

- 4.5.1 In the event of no Response to the Application, the Referral or Response to the initial application within the time allowed and the Tribunal has not allowed the filing of further affidavits, the exchange of documents shall be considered closed: provided the Tribunal may on an application by a party allow the delivery of documents after the time allowed for the exchange of documents. Such application may be made as part of the document which is filed after the time allowed for the delivery of such document.
- 4.5.2 Where no Reply is filed within the period allowed to deliver a Reply, the initiating party may within 15 business days of the expiry of the period allowed to deliver a Reply apply to the Registrar to allocate a date for the hearing of the Application or the Referral. Provided that where no such notice is delivered within the aforementioned period, the Respondent or any other party may apply for such allocation immediately upon the expiry the period.

4.6 Non-compliance and condonation for non-compliance with these Rules

- 4.6.1 Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.
- 4.6.2 Subject to Rule 4.6.3 below, should the defaulting party fail to comply within 10 days, an application may on notice be made to the Tribunal and the Registrar, after consulting the parties to the matter, must set the matter down for hearing at the earliest convenient date for the Tribunal to make such an order thereon as it considers appropriate under the prevailing circumstances.
- 4.6.3 In the event that the Application or the Referral is already set down for hearing and the Tribunal deems it to be just for the interlocutory application regarding non-compliance with these Rules to be dealt with at the hearing of the Application or the Referral it shall be enrolled as such by the Registrar for adjudication at the hearing of the Application or the Referral.

4.7 Request for Default Order

- 4.7.1 Where no Answer, as envisaged in 4.4.1 is delivered the initiating party may within 15 business days of the expiry of the period allowed to deliver an Answer apply to the Registrar for adjudication of the matter as a request for default order.
- 4.7.2 The Tribunal may make an appropriate order—
- 4.7.2.1 if it is satisfied that the Application or the Referral was adequately served; and

- 4.7.2.2 after it has heard any required evidence concerning the matter.
- 4.7.3 The Tribunal may adjudicate upon the request for default order on the basis of the documents filed and without hearing oral evidence.
- 4.7.4 An order made by the Tribunal under this Rule must be served on the defaulting party and on every other party within 15 business days after it is made or any other longer period allowed by the Tribunal.
- 4.7.5 A person affected by an order made under this Rule may, within 20 business days after such party has acquired knowledge of such order, apply to the Tribunal upon notice to the initiating party or any person in whose favour the order was made to set aside such order, upon good cause shown, on such terms as the Tribunal considers to be appropriate under the prevailing circumstances.

4.8 Joinder or substitution of parties

- 4.8.1 The Tribunal, or the Presiding Member, as the case may be, may combine any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their respective rights to the relief depend on the determination of substantially the same question of law or facts.
- 4.8.2 If a party to any proceedings has been incorrectly or defectively cited, the Tribunal or the Presiding Member, as the case may be, on application and on notice to the party concerned, may correct the error or defect and may make an order as to costs.
- 4.8.3 If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Tribunal or the Presiding Member, as the case may be, for an order substituting that party for an existing party, and the Tribunal or the Presiding Member, as the case may be, may make an order, including an order as to costs, or give directions as to the further procedure in the proceedings.
- 4.8.4 An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.
- 4.8.5 No joinder or substitution in terms of this Rule will affect any prior steps taken in the proceedings.

4.9 Intervention

- 4.9.1 At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings by filing an application, which must—
 - 4.9.1.1 include a concise statement of the nature of the person's interest in the proceedings, and the matters in respect of which the person will make representations;
 - 4.9.1.2 furnish such person's full names, registration or identity numbers, description, street address, e-mail address (if available), and other contact details, and where such person has appointed a representative in terms of Rule 6, additionally to providing such person's

- information, the following information must be furnished regarding the representative: full names, registration or identity numbers, street address, e-mail address (if available), and other contact details; and
- 4.9.1.3 be served on every other party who is a participant in the proceedings.
- 4.9.2 No more than 10 business days after receiving the application to intervene, a Member of the Tribunal assigned by the Chairperson must either—
- 4.9.2.1 make an order allowing the applicant to intervene, subject to any limitations—
- (a) necessary to ensure that the proceedings will be orderly and expeditious;
 - (b) on the matters with respect to which the person may participate, or the form of their participation; or
 - (c) deny the application, if the Member concludes that the interests of the person are not within the scope of the Act, or are already represented by another participant in the proceeding.
- 4.9.3 Upon making an order in terms of Rule 4.9.2.1, the Presiding Member may make an appropriate order as to costs.
- 4.9.4 If an application to intervene is granted—
- 4.9.4.1 the Registrar must send to the party allowed to intervene a list of all documents filed in the proceedings as at the date leave to intervene was granted; and
- 4.9.4.2 access by the party allowed to intervene to a document filed or received in evidence is subject to any outstanding order of the Tribunal restricting access to the document.

5. PRE-HEARING PROCEEDINGS

5.1 Case Management

- 5.1.1 The Presiding Member may, from time to time, interact with the parties, through the office of the Registrar, on procedural measures or for purposes of managing the matter to ensure the expeditious hearing or disposal of the arbitration proceedings.
- 5.1.2 Measures to ensure effectiveness in case management may include establishing a procedural timetable to be followed or modifying the procedural timetable established, for the conduct of the arbitration.
- 5.1.3 Where the circumstances of the matters so require the Presiding Member may conduct case management through a meeting in person, by mechanical device, video-conference, telephone or similar means of communication, directly with the parties: provided that the choice of the means for conducting case management shall be at the discretion of the Presiding Member.
- 5.1.4 The Presiding Member may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through a representative.

5.1.5 The Presiding Member may use any of the means of conducting case management where a point of law has been raised, and it appears to the Presiding Member that either case management or a pre-hearing conference under Rule 5.2 will not be practical to resolve that question before proceeding with the hearing, the Presiding Member may direct the Registrar to set only that question down for hearing by the Tribunal.

5.2 Pre-hearing conference

5.2.1 Within 20 business days after closure or completion of exchange of documents, the Presiding Member may convene a pre-hearing conference on a date and at a time determined by the Presiding Member after consultation with the parties and the Registrar.

5.2.2 Pre-hearing conferences need not follow formal rules of procedure and are not open to the public: provided that the Presiding Member may determine rules for the conducting of a pre-hearing conference.

5.2.3 At a pre-hearing conference, the Presiding Member may—

5.2.3.1 establish procedures for protecting confidential information, including the terms under which participants may have access to that information;

5.2.3.2 direct the Commission or the Panel to investigate specific issues or obtain certain evidence;

5.2.3.3 require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its argument, if any, with respect to the dispute, and identifying what it believes are the major unresolved issues;

5.2.3.4 where a point of law has been raised, and it appears to the Presiding Member at a pre-hearing conference to be practical to resolve that question before proceeding with the Conference, the Presiding Member may—

(a) direct the Registrar to set only that question down for hearing by the Tribunal; and

(b) may adjourn the pre-hearing conference pending the resolution of that question by the Tribunal.

5.2.3.5 give directions in respect of—

(a) technical or formal amendments to correct errors in any documents filed in the matter;

(b) clarifying and simplifying the issues;

(c) obtaining admissions of particular facts or documents;

(d) any dispute regarding the duty to begin or the onus of proof;

(e) witnesses to be called by the Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;

- (f) a timetable for the exchange of summaries of expert opinions or other evidence that will be presented at the hearing, and any other pre-hearing obligations of the parties; or
 - (g) the procedure to be followed at the hearing, and its expected duration, and any other matter that may aid in resolving the matter.
- 5.2.4 With the consent of the parties and without any formal application, at such conference or thereafter give any direction which might promote the effective conclusion of the matter, including the granting of condonation in respect of this or any other Rule.
- 5.2.5 After concluding a pre-hearing conference, the Presiding Member must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.
- 5.2.6 The Presiding Member may in his/her discretion adjourn a pre-hearing conference or schedule further pre-hearing conferences as required by the circumstances of the matter.
- 5.2.7 At any time, but not within five (5) business days prior to the hearing of a matter, the parties, on their own initiative or at direction of the Tribunal, may convene and hold pre-hearing conferences for any purposes, including to attempt to reach agreement on any outstanding issue or resolution of the matter.
- 5.2.8 The minutes of the pre-hearing conference shall be prepared, signed by or on behalf of every party and be filed with the registrar within 3 business days, provided that where the pre-hearing conference was held in terms of Rule 5.2.7 the minutes shall not reflect settlement proposals and reaction thereto except with the consent of all the parties.

6. CONDUCT OF ARBITRATION PROCEEDINGS

6.1 Set down of matters, including urgent matters

- 6.1.1 Within 10 business days after closure or completion of exchange of documents, the initiating party may apply for the matter to be set down for arbitration hearing, failing which any other party may apply for the set down of the matter: provided that in the event that a pre-hearing conference has been convened the date of arbitration shall be determined by the Presiding Member in consultation with the parties and the Registrar at such hearing.

- 6.1.2 Where a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the Registrar for the matter to be re-enrolled for hearing, unless the Presiding Member directs otherwise.
- 6.1.3 Upon receipt of the application in terms of this Rule, the Registrar must allocate a time, date and place for the hearing in consultation with the Presiding Member and the parties send a Notice of Hearing substantially similar to form CTR 151 to each party.
- 6.1.4 Subject to Rule 6.1.6, if all parties to a dispute agree in writing that, an arbitration should be conducted as a matter of urgency, the parties may jointly apply in writing to the Registrar for such an arbitration to be conducted on an urgent basis setting forth explicitly the circumstances which such party avers that they render the matter urgent and the reasons why such party claims that it could not be afforded substantial redress at a hearing in due course, provided that the Tribunal confirms the availability of a Member to adjudicate the matter and of other resources necessary for an arbitration hearing.
- 6.1.5 Subject to Rule 6.1.6, in the event of no agreement between the parties, any party to a dispute may apply to the Tribunal that, an arbitration should be conducted as a matter of urgency to the Registrar set forth explicitly the circumstances which such party avers that they render the matter urgent and the reasons why such party claims that it could not be afforded substantial redress at a hearing in due course.
- 6.1.6 In urgent hearing of the Application, the Referral or any other application the Tribunal may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it may deem appropriate under the prevailing circumstances.
- 6.1.7 Where an order was granted in the absence of a party in a matter heard on an urgent basis a party against whom such an order was given may by notice set down the matter for reconsideration of the order.

6.2 **Withdrawal, removal and postponement**

- 6.2.1 At any time before the Tribunal has determined a matter, the initiating party may withdraw all or part of the matter by—
- 6.2.1.1 serving a notice substantially similar to form CTR 148 on each party and therein tendering to pay taxed or agreed costs of the Application or the Referral on a party and party scale of the High Court: provided that the parties may agree that no such costs shall be payable by the initiating party; and
- 6.2.1.2 filing the notice of withdrawal with proof of service.
- 6.2.2 At any time before the arbitration hearing, the initiating party or any party who had applied for the set down or re-enrolment of the matter may deliver a notice for the removal of the matter from the roll: provided that no such removal shall be allowed within 5 business days of the date of the arbitration hearing, unless consented to by all the parties and the Registrar.
- 6.2.3 At any time before the arbitration hearing of a matter, any party may apply for the postponement of the arbitration hearing and tender the costs occasioned by such postponement of the matter. The Presiding Member of the Tribunal would determine such application and, if

successful, direct as to payment of the costs occasioned by the postponement of the hearing of the matter and re-enrolment of the arbitration proceedings.

6.2.4 If no consent to pay costs is contained in a notice of withdrawal or the notice of removal of the matter from the roll, any other party may apply to the Tribunal for an appropriate order for costs, including costs of any application made under this Rule.

6.3 **Witnesses**

6.3.1 Any party, desiring the attendance of any person to give evidence at a hearing as a witness may request the Tribunal to have a subpoena issued by the Registrar in form CTR 160 for that purpose.

6.3.2 The witness at the arbitration hearing shall be examined *viva voce*, but the Presiding Member may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any hearing be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to the Presiding Member considers appropriate under the prevailing circumstances: Provided that where it appears to the Presiding Member that any other party reasonably requires the attendance of a witness for cross-examination, and the physical attendance of such witness can be secured, the evidence of such witness shall not be given on affidavit.

6.3.3 If a witness is required to produce in evidence any document or thing in the witness's possession, the subpoena must specify the document or thing to be produced by such witness at the hearing.

6.3.4 After the subpoena has been issued, it must be served by the sheriff in any manner authorised by the rules of the High Court.

6.3.5 A witness who has been required to produce any document or thing at the hearing must hand it over to the Registrar as soon as possible after service of the subpoena, unless the witness claims that the document or thing is privileged. Thereafter the parties may inspect such deed, document, writing or tape recording and make copies or transcriptions thereof, after which the witness is entitled to its return.

6.3.6 A witness in any proceedings before the Tribunal is entitled to be paid in accordance with the tariff of allowances prescribed for witnesses testifying before the High Court, provided that, the Tribunal may order that no allowance or only a portion of the prescribed allowances be paid to any witness.

6.4 **Language, interpreters and translators**

6.4.1 The proceedings before the Tribunal shall be conducted in the English language: provided that a party may arrange that a witness or any other person use any of the other official languages of the Republic of South Africa or any other language and arrange for the interpretation of such language into English at own costs.

6.4.2 Before an interpreter may interpret in Tribunal proceedings, the interpreter must take an oath or make an affirmation in the following form before a Member of the Tribunal:

"I,(full names) swear/ affirm that whenever I am called on to interpret in any proceedings before the Tribunal, I will correctly interpret to the best of my ability from the language I am called on to interpret into one or other of the official languages, and vice versa."

- 6.4.3 An oath or affirmation must be taken or made in the manner prescribed for the taking of an oath or the making of an affirmation in the rules of the High Court, read with the changes required by context and a printed copy of the oath or affirmation must be signed by the interpreter.
- 6.4.4 Any person admitted and enrolled as a sworn translator of any division of the High Court is deemed to be a sworn translator for the Tribunal.

6.5 Representation of parties

- 6.5.1 Any party may, in the matter of a juristic person or a representative litigant, be represented by any person or persons authorised by it.
- 6.5.2 A representative acting on behalf of any person in any proceedings must notify the Registrar and every other party, advising them of the following particulars:
- 6.5.2.1 the representative's name;
- 6.5.2.2 the postal address and place of employment or business; and
- 6.5.2.3 if a fax number, telephone number or email address are available, those details.
- 6.5.3 A person who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the Registrar and every other party of that termination, and of the appointment of another representative, if any, and include that representative's particulars, as set out in Rule 6.5.2.
- 6.5.4 On receipt of a notice in terms of Rule 6.5.2 or Rule 6.5.3, the address of the representative or the party, as the matter may be, will become the address of record for notices to and for service on that party of all documents in the proceedings: provided that a person who, before receiving a notice in terms of Rule 6.5.2 or Rule 6.5.3, has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Tribunal orders otherwise.
- 6.5.5 A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- 6.5.6 A notice delivered in terms of Rule 6.5.5 must state the names and addresses of each party who is being notified.
- 6.5.7 After receiving a notice referred to in Rule 6.5.6, the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.

6.6 Place of the Arbitration

- 6.6.1 The place of the arbitration shall be in Pretoria or any other location the Tribunal considers appropriate and convenient when considering the addresses of the parties and/or the witnesses involved in the matter.
- 6.6.2 Without derogating from the generality of Rule 6.7.1, the Tribunal may direct that the arbitration be conducted through video-link or similar means of communication, where it is considered appropriate and convenient to do so.

6.6.3 The Tribunal may on application by a party direct that a witness testifies before the Tribunal through video-link or similar means of communication: provided that such application is to be made within 15 business days after closure or completion of exchange of documents.

6.7 Hearings

6.7.1 The Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the facts of the matter and may decide the matter solely on the documents submitted by the parties unless any of the parties requests a hearing.

6.7.2 The Tribunal may condone any technical irregularities arising in any of its proceedings.

6.7.3 The arbitration proceedings shall be conducted in private, and a party shall be entitled to require the arbitrator to exclude therefrom any person whose presence is not reasonably required by another party.

6.7.4 Upon the request of any party, the Tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

6.7.5 The Presiding Member may strike a matter off the roll if the initiating party is not present and no other party has filed a Counterclaim in the matter. Provided that the Respondent shall be entitled to an order granting absolution from the instance with costs, but may lead evidence with a view to satisfying the Tribunal that final award should be granted in its favour and the Tribunal, if so satisfied, may grant such award.

6.7.6 If a matter is struck off the roll, the matter may not be re-enrolled unless—

6.7.6.1 the party concerned files an affidavit setting out a satisfactory explanation for the failure to attend the hearing; and

6.7.6.2 a Member of the Tribunal, on considering the explanation offered, orders the matter to be re-enrolled.

6.7.7 In the event that the initiating party is present but the Respondent or intervening party or any other party is not present, the initiating party may prove its claim in so far as the burden of proof lies upon it and an award shall be given accordingly, in so far as the initiating party discharged such burden.

6.7.8 The provisions of this Rule shall apply to any party making any Counterclaim, any claim as an intervening party or any other type of claim as if it were an initiating party, and any person against whom such a claim is made as if it were a Respondent.

6.7.9 Where the burden of proof is on the initiating party, it may briefly outline the facts intended to be proved and the initiating party may then proceed to the proof thereof.

6.7.10 At the close of the initiating party's case, the Respondent may apply for absolution from the instance, in which event the Respondent may address the Tribunal and the initiating party may address the Tribunal in response thereto. The Respondent may thereupon Reply on any matter arising out of the address of the initiating party.

6.7.11 If absolution from the instance is not applied for or has been refused and the Respondent has not closed its case, the Respondent may briefly outline the facts intended to be proved and the Respondent may then proceed to the proof thereof.

- 6.7.12 Upon the matters on both sides being closed, the initiating party may address the Tribunal and the Respondent may do so, after which the initiating party may Reply on any matter arising out of the address of the Respondent.
- 6.7.13 Either party may apply at the opening of the hearing for a ruling by the Tribunal upon the onus of adducing evidence, and the Tribunal after hearing argument may give a ruling as to the party upon whom such onus lies: Provided that such ruling may thereafter be altered to prevent injustice.
- 6.7.14 If there is one or more intervening parties or if there are Respondents to a counterclaim who are not initiating parties in the matter, any such party shall be entitled to address the Tribunal in opening its case and shall lead its evidence after the evidence of the initiating party and of the Respondent has been concluded and before any address at the conclusion of such evidence. Save in so far as the Tribunal shall otherwise direct, the Respondents to any counterclaim who are not initiating parties shall first lead their evidence and thereafter any intervening parties shall lead their evidence in the order in which they were joined in the matter.
- 6.7.15 After the Respondent has given its evidence, the initiating party shall have the right to give rebutting evidence on any issues in respect of which the onus was on the Respondent: Provided that if the initiating party shall have given evidence on any such issues before closing its case it shall not have the right to give any further evidence thereon.
- 6.7.16 Nothing in these Rules shall prevent the Respondent from cross-examining any witness called at any stage by the initiating party on any issue in dispute, and the initiating party shall be entitled to re-examine such witness consequent upon such cross-examination without affecting the right given to it by these Rules to give evidence at a later stage on the issue on which such witness has been cross-examined. The initiating party may further call the witness so re-examined to give evidence on any such issue at a later stage.
- 6.7.17 If it appears convenient to do so, the Tribunal may at any time make any order with regard to the conduct of the hearing as it considers appropriate under the prevailing circumstances, and thereby vary any procedure laid down by this Rule.

6.8 **Award**

- 6.8.1 At the conclusion of adjudication proceedings, the Presiding Member must issue an award together with written reasons for the award.
- 6.8.2 Where the proceedings are adjudicated by a Presiding Panel, the award of the majority of the Presiding Panel shall be the award of the Tribunal.
- 6.8.3 In the event the award is to be made after the proceedings have been adjourned, it shall not be necessary to reconvene the proceedings for purposes of making the award or delivering the award. The award shall be handed down electronically by the Registrar sending a copy by e-mail to all parties and publishing the award on the website of the Tribunal, subject to any rulings already made by the Tribunal on confidentiality.
- 6.8.4 An award by the Tribunal with respect to an award of, or a notice or order issued by the Commission is binding on the Commission, subject to any review by, or appeal to, the High Court.
- 6.8.5 An order of the Tribunal may be filed in the High Court as an order of the court, in accordance with the rules of the High Court.

6.9 Costs and taxation

- 6.9.1 Upon making an order, the Tribunal may make an order for costs and determine which party shall be liable for payment of the costs of the arbitration or, in case of more than one party, in what proportions the parties shall be liable to pay such costs. Provided that an agreement between the parties as to costs of arbitration or any interlocutory proceedings before the Tribunal shall be dealt with in terms of this Rule as if it is an order of the Tribunal.
- 6.9.2 An order for costs made by the Tribunal shall be at the prevailing tariff for party and party costs of the High Court, unless the Tribunal directs otherwise.
- 6.9.3 The Registrar may perform the functions and duties of a taxing master or appoint any person as taxing master who in the Registrar's opinion is fit to perform the functions and duties assigned to or imposed on a taxing master by these Rules.
- 6.9.4 The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the Tribunal.
- 6.9.5 At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- 6.9.6 The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.

6.10 Record of the Arbitration

- 6.10.1 The recording of the arbitration proceedings will be given to parties upon request.
- 6.10.2 The Registrar must compile a record of any proceeding in which a hearing has been held, including—
- 6.10.2.1 the Application, the Referral or any initiating document, the Answer or the Reply or any other affidavit filed in the matter;
 - 6.10.2.2 the notices or similar documents;
 - 6.10.2.3 any interlocutory orders made by the Tribunal or a Member;
 - 6.10.2.4 all documentary evidence filed with the Tribunal;
 - 6.10.2.5 the mechanical records, if any, of the oral evidence given at the hearing; and
 - 6.10.2.6 the final award of the Tribunal and the written reasons thereof.
- 6.10.3 A record shall be made of:
- 6.10.3.1 any award or ruling given by the Tribunal;
 - 6.10.3.2 any evidence given before the Tribunal;
 - 6.10.3.3 any objection made to any evidence received or tendered;
 - 6.10.3.4 the proceedings of the Tribunal generally (including any inspection *in loco* and any matter demonstrated by any witness before the Tribunal); and

- 6.10.3.5 any other portion of the proceedings which the Tribunal may specifically order to be recorded.
- 6.10.4 Such record shall be kept by such means that the Tribunal deems to be appropriate and may in particular be taken down in shorthand or be recorded by mechanical means.
- 6.10.5 The shorthand notes so taken or any mechanical record shall be certified by the person taking the same to be correct and shall be filed with the Registrar. It shall not be necessary to transcribe them unless the Tribunal or a Member so directs. If and when transcribed, the transcript of such notes or record shall be certified as correct by the person transcribing them and the transcript, the shorthand notes and the mechanical record shall be filed with the Registrar. The transcript of the shorthand notes or mechanical record certified as correct shall be deemed to be correct unless the Tribunal otherwise orders. The arbitration proceedings will be recorded and given to parties upon request.
- 6.10.6 Any party to any matter in which a record has been made in shorthand or by mechanical means may apply in writing through the Registrar to a Member to have the record transcribed if an order to that effect has not already been made. Such party shall be entitled to a copy of any transcript ordered to be made upon payment of the prescribed fees.
- 6.10.7 Every recording officer employed to take down a record and every person employed to make a mechanical record of any proceedings shall be deemed to be an officer of the Tribunal and shall, before entering on his or her duties, take the following oath:
 - “I,, do swear that I shall faithfully, and to the best of my ability, record in shorthand, or cause to be recorded by mechanical means, as directed by the Member, the proceedings in any case in which I may be employed as an officer of the Tribunal, and that I shall similarly, when required to do so, transcribe the same or, as far as I am able, any shorthand notes, or mechanical record, made by another recording officer or person employed to make such mechanical record.”

7. AMENDMENT OF THESE RULES

- 7.1 These Rules may at any time be amended by the Tribunal, three yearly or as necessary and will be available on request made to the Tribunal.
- 7.2 Such amendments shall be applicable to all future and current, including part-heard, arbitrations, save to the extent that the Tribunal may, in the interests of a just determination of the dispute, rule otherwise.
- 7.3 It shall be always the duty of the parties to ascertain the latest version of the Rules from the Registrar.

8. SHORT TITLE

These Rules are called the Arbitration Rules of the Companies Tribunal.