The Companies Act, 2008

Development of Regulations

Issues for Discussion

7 and 11 August 2009

Background

The Companies Act, 2008 (the Act) received presidential assent on 8 April 2009, and was published in the Gazette (Gazette 32121, Notice #421) the following day. In terms of section 225, the Act will come into operation on a date to be determined by the President, no earlier than 8 April 2010. Although no specific date has yet been proposed, much less determined, **the dti** is working with the expectation that implementation of the Act will occur sometime in mid 2010.

Within **the dti**, the Consumer and Corporate Regulation Division (CCRD) is responsible to oversee the preparations for implementation of the Companies Act, and is now beginning the process of consultation for the drafting of the necessary regulations. The regulation drafting project is under the overall direction of Ms Zodwa Ntuli, Deputy Director General: CCRD and Ms Nomfundo Maseti, Chief Director: Policy and Legislation, and it is managed by Mr. McDonald Netshitenzhe, Director: Corporate Law and Policy, assisted by Mr. Desmond Ramabulana, Deputy Director: Corporate Law and Policy. Mr. Phil Knight, a consulting legislative counsel, is providing external advice and drafting assistance to the project, and is primarily responsible for preparing the text of the draft regulations.

CCRD's project team have agreed some general guidelines for the project. Specifically –

The scope of the project

The drafting project must proceed within the terms of the Act as published. We are aware that some stakeholders have expressed concerns about the treatment of certain matters, or formulation of certain provisions, within the Act. It is to be expected that the Act will come under close study and scrutiny at this time, and those with concerns are obviously free to pursue them, and motivate for change if they wish in the proper forum and through the proper channels.

However, the regulation project has no mandate to entertain or comment upon such issues, and is not to be regarded as an opportunity to address or resolve any such issues by means of regulations that seek to correct or over-ride alleged deficiencies in the Act.

The philosophy of regulation

The function of regulations is to amplify certain aspects of the policy and law as enunciated in the Act, addressing matters of procedure, detail or technicality to the extent that Parliament has, through the Act, delegated authority to the Minister to do so. It follows that any proposed regulation must be consistent with the overall policy of the Act, as well as with its specific provisions, and must rest on a foundation of clearly delegated authority.

In terms of section 5(1) of the Act, Parliament requires that the Act be " . . . *applied in a manner that gives effect to the purposes set out in section 7*". Since the regulations will be one of the principal instruments by which the Act is to be applied, it follows that any proposed regulation must satisfy the test set out in section 5(1), and accordingly must be framed in such a manner that it gives effect to the purposes recited in section 7.

The Act exemplifies the approach that the regulations are to follow: that the law is to promote compliance with the Bill of Rights in the application of company law, to be

enabling, expansive and liberal, to balance competing claims, to promote efficiency, to be scalable – applying appropriately to companies as they mature and grow – and to enhance predictability. Any proposed regulations must meet that test.

It is not the proper function of regulations in terms of this Act to impose rules for their own sake, or to be an instrument of obsessive control, nor to impose excessive or rigid formality. On the contrary, in terms of section 6, the Act states a preference for substantial rather than formal compliance. That doctrine is to be reflected in every aspect of the regulations and the forms that are to be developed.

In terms of the requirement that any regulations must rest on a foundation of clearly delegated authority, the drafting team will propose regulations that –

(a) are expressly mandated by a specific provision or reference within the Act; or
(b) are necessary to provide sufficient additional detail to ensure that any provision can be properly implemented and administered, as contemplated and authorised in section 223 (1)(d)(ii).

The structure of the regulations

The Act requires several different topics to be addressed by regulation, which could be promulgated under several different titles, much in the manner that has evolved over the years in terms of the Companies Act, 1973. Alternatively, a single volume approach could be used, with the various topics organised in chapters approximately parallel to the outline followed in the Act itself. There are merits to each of these approaches.

The project team has determined to proceed on the 'single volume' model, at least through the initial stages of regulation development. We are prepared to re-visit this decision if it becomes apparent that it is an impediment to delivering regulations that meet the goals of efficiency set out in the Act.

In the interests of maintaining a degree of familiarity, the 'look and feel' of the regulations will be modeled on the template used in the Competition Commission and Competition Tribunal Regulations promulgated in terms of the Competition Act, 1998.

Appendix 2 sets out the working outline for the proposed Companies Regulations, 2010, which may be expanded as the need is recognized to address ancillary or incidental matters.

The process of developing the regulations

There was apparently an expectation – perhaps an apprehension – among some stakeholders that CCRD would prepare a comprehensive first draft of the proposed regulations, and only then engage with stakeholders, limiting consultation essentially to a response to that which had been initiated. Those who anticipated having such a document to respond to at the outset of the consultation may be disappointed.

Because of the scope of the Companies Act, a very wide range of matters must be addressed by the regulations. Many of the topics are highly technical and specialized. CCRD recognised that if we were to attempt a first draft ahead of consultation there was a real risk that we would presume too much, and omit too much, narrowing the agenda before its full scope was properly canvassed and understood.

CCRD also recognised that it will be necessary or desirable to engage extensively with the many critical stakeholders concerned, through several iterations over the next several months as the regulations are being prepared. In the initial stage of consultation, now under way, we seek to determine the full scope and required content. Only as that is completed will we begin to prepare a first draft.

The topics to be addressed lend themselves to three distinct approaches to consultation. The Act itself requires that certain matters are to be addressed in consultation with specific named stakeholders. Other matters, on which the Act is silent as to consultation, are nevertheless also sufficiently specialized that, initially, a limited, bi-lateral, consultation is warranted. The remaining matters call for a more general engagement with a wide range of stakeholders.

Accordingly, CCRD will initially consult bi-laterally with the following entities:

CIPRO, with respect to the administration of the Companies Commission, the registry filing requirements and forms, and the complaint handling and enforcement procedures.

JSE, with respect to the offering of securities to the public.

STRATE, with respect to the recording and transfer of uncertificated securities.

Securities Regulation Panel, with respect to the administration of the new Takeover Regulation Panel, its enforcement procedures, and the Takeover Regulations.

The remaining topics will be addressed in wider consultations, on an invitation basis, with stakeholders who established their interest in the Companies Act by participating in the public consultation processes during development and consideration of the Act itself.

Once a first draft of each chapter of the regulations has been formulated the entire document will be assembled and distributed on a preliminary basis only to those stakeholders who have engaged in the initial process. A relatively brief time will be afforded for comment on that draft, following which it will be revised and presented to **the dti** for approval to publish for public comment, which we anticipate should occur no later than 30 November 2009, with the comment period to end 28 February 2010.

As was the case with the Companies Bill itself, all comments in response to publication of the Bill will be considered, the issues will be identified and consolidated in terms of the regulatory provisions implicated in the comments, and the relevant provisions will each be reviewed in light of the comments.

When reviewing the topics that were initially addressed bi-laterally, CCRD will again engage with the relevant stakeholders named above. When reviewing other matters, CCRD may consult again with the wider group of stakeholders, if it appears to be necessary or desirable to do so, in light of the comments received.

Once settled after the comment period, the Bill will be reported to the Portfolio Committee on Trade and Industry, and subsequently, recommended to the Minister of Trade and Industry for promulgation.

Although the specific dates may change, the tentative schedule for this work is:

1.	21 August 2009	Completion of initial consultations
2.	30 September 2009	Distribution of preliminary draft to stakeholders
3.	15 October 2009	Final date for stakeholder responses
4.	1 November 2009	Completion of Draft for Public Comment
5.	15 November 2009	Publication in Gazette
6.	15 February 2010	Final Date for Public Comment
7.	31 March 2010	Submission of Final Regulations for Promulgation

Matters to be considered in this consultation

The matters to be considered in the wider consultation to be initiated at workshops on 7 and 11 August fall under the following topics:

1. **The Regulatory agenda as reflected in the outline**
2. **Company Accountability**
3. **Company Governance**
4. **Fundamental Transactions and Takeovers**
5. **Company Securities**
6. **Business Rescue**

The process will benefit most if the stakeholder group directs its attention to the more fundamental and substantial issues arising under those headings. Accordingly, during the workshops we will focus discussion on the enumerated issues set out in Appendix 1, following this page. We would appreciate your consideration of, and your responses to any of them at your earliest convenience, whether in person at the workshop, or by way of written submission or both.

Written submissions may of course address any matters of concern, whether captured in the outline, or omitted from it. Your responses will greatly assist us in shaping the agenda for our continued consultations with you over the ensuing months. Please provide as much detail as you like, with an emphasis on identifying issues and proposing approaches, rather than on attempting to draft any particular formulations at this time.

To be given the proper consideration they deserve, your written submissions should be delivered by email no later than 21 August 2009 to McDonald Netshitenzhe at MNetshitenzhe@thedti.gov.za.

Appendix 1
Issues to be discussed at stakeholder workshops

1. The Regulatory agenda as reflected in the outline

1.1 Do you support the general model of regulations proposed in this paper?

1.2 If you feel it ought to be reconsidered, please indicate how and why.

1.3 Does the outline set out in Appendix 2 canvas all issues you would wish to see addressed in the Regulations. If not, please indicate what is missing, and where you think it ought to be inserted.

2. Company Accountability

Part A – Company records

2.1 In terms of section 24 (3)(b), every company will be required to maintain a record of its directors. That record must contain all the information required by or in terms of section 24 (5), which lists several categories of information. In addition, section 24(5)(g) contemplates that additional categories of information may be added to the required list, by way of regulation.

What, if any, additional categories of information should be so required?

2.2 Section 26 sets out the framework of rights of various persons to access information held by the company. Holders of a beneficial interest in any of a company's securities enjoy the widest range of access rights, which are set out in s. 26 (1).

That subsection stipulates that the access rights may be exercised by direct request to the company, in the prescribed manner. See s. 26 (1)(c).

What procedures should be prescribed for such direct requests for access to company information by the holders of any beneficial interest in any of its securities?

2.3 Section 26 (4) also recognizes the right of any person, irrespective whether or not the person holds any beneficial interest in a company's securities, to access information belonging to the company, in terms of s. 32 of the Constitution, the Promotion of Access to Information Act, or any other public regulation.

Section 26 (5) authorizes the Minister to make regulations respecting the exercise of the rights set out in the section.

What regulations, if any, should be promulgated in terms of section 26, with respect to the rights of access of persons who do not have a beneficial interest in the company's securities?

2.4 Section 28 requires every company to keep accurate and complete accounting records to the extent necessary for the company to satisfy its obligations in terms of the Act, and any other law with respect to the preparation of

financial statements, and to include within such records all prescribed accounting records, which must be kept in the prescribed manner and form.

What, if any, accounting records should be required by regulation for all companies?

Should the same minimum requirements apply to all companies, or should they vary among different categories of companies?

If any accounting records are to be required by regulation, what manner and form standards should be prescribed for those records?

Part B – Financial Reporting Standards

In terms of section 29, these regulations must –
(a) be made in terms of, and comply with, section 29 (4) and (5); and
(b) be consistent with International Financial Reporting Standards.

2.5 In terms of section 29 (4), the Minister may prescribe financial reporting standards, and may also prescribe form and content for summary financial reports that companies are allowed to issue in terms of s. 29 (3).

The issue of any such standards is optional and, in terms of s. 29 (5)(c), the standards may be different for profit and non-profit companies, or for different categories of profit companies.

What, if any, financial reporting standards should be considered?

What, if any, categories of companies should be recognized as warranting differential reporting standards?

What, if any, regulations should be promulgated concerning summary financial reports contemplated in s. 29 (3)?

2.6 Section 30 (1) requires that every company must produce annual financial statements (AFS).

Every public company (which for this purpose captures all state owned companies as well) must have their AFS audited.

Non public companies (i.e. all non-profit companies, private companies, and personal liability companies) are not required to have an audit unless their own Memorandum of Incorporation requires an audit of the AFS, or they fall into a category of company designated by the Minister in terms of s. 30 (7) (a). In prescribing the categories of companies to be so designated, the Minister is to be guided by the broad ‘public interest’ indicators set out in s. 30 (2)(b)(i).

In any other case, a company is permitted to have its AFS independently reviewed. The Minister is authorized to prescribe the manner, form and procedures for the conduct of such independent reviews, and the professional qualifications of persons who conduct such reviews. The clear implication of s. 30 (2)(b), read with s. 30 (7)(b) is that an independent review is not just another name for an audit, but is in fact something less: less rigorous, less

burdensome, less onerous, and less costly to the company, and is contemplated to be performed by persons other than auditors.

What, if any, categories of non-public companies should be designated as being required to have their AFS audited, as contemplated in s. 30 (2)(b)(i)?

What, if any, regulations should be prescribed concerning the manner, form and procedures for the conduct of independent reviews?

What professional standards should be established for persons to conduct such independent reviews?

Part C – Enhanced Accountability

2.7 Section 72 (4) authorizes the Minister to require '*a company or a category of companies*' to establish a social and ethics committee, if it is desirable in the public interest, having regard to the size of the company and the nature and extent of its activities.

The Act does not define '*social and ethics committee'*, nor does it provide for any functions of such a committee within a company.

Should the Minister exercise the authority on a case-by-case basis, or only with respect to categories of companies?

If categories of companies are to be so designated, what categories should fall within the designation – what should be the threshold in terms of company size and extent of activities?

Should the Minister, by regulation, fill the lacunae in the Act by designating minimum functions for such committees to perform within the companies that are required to have them?

2.8 Chapter 3 of the Act applies to all companies that are required to have their AFS audited. In terms of s. 84 (4), every such company must appoint an audit committee and, in terms of s. 94 (5), the Minister may prescribe -

'*minimum qualification requirements for [audit committee members] as necessary to ensure that any such committee, taken as a whole, comprises persons with adequate relevant knowledge and experience to equip the committee to perform its functions'*.

What, if any, minimum qualifications should be prescribed for audit committee members?

3 Company Governance

3.1 Section 66 (10) authorizes the Minister to designate particular functions within a company to constitute a 'prescribed office' for the purposes of the Act. The significance of such a designation is that the person performing the designated function or functions is subjected to accountability standards somewhat analogous to those of directors. Sections in which such consequences are implicated include:

15, 20, 30, 41, 43, 45, 69, 75-78, 81, 90, 93, 94, 96, 108, 155, 159, 162, 165, 169.

Considering the implications of such a designation, what functions within a company should be designated as a prescribed office?

3.2 The Act permits both shareholders and directors of companies to participate n their respective meetings through electronic means, and requires that the annual general meetings of public companies must be '*reasonably accessible*' for participation on that basis. The italicized words are not defined in the Act.

Should the regulations include uniform minimum standards to satisfy the reasonableness test set out in section 61 (10), and other cases in which electronic participation is contemplated?

3.3 In several sections, the Act requires notice to be given to the shareholders, or vice versa, or to be given by the directors individually.

Should the regulations include uniform minimum standards for -

(a) holders of securities to deliver notice to company in terms of e.g: s. 37 (8), 39, 56, 58, 115 (8), 164 (3), 165 (2); or

(b) company to deliver notice to holders of securities in terms of e.g: s. 39, 45(5), 56 (5), 60, 164 (2) and (4); or

(c) directors to give notice of personal financial interest. In terms of s. 75 (4)?

If so, what should those minimum requirements be?

3.4 Should the regulations prescribe minimum standards for satisfactory identification for shareholder or proxy participation in meetings, to satisfy the requirements set out in s. 63 (1).
If so, what should those minimum requirements be?

3.5 What should be the prescribed value of criminal fines such as would result in automatic disqualification as a director in terms of s. 69(8)(b)(iv)?

4. Fundamental Transactions and Takeovers

4.1 Section 118 provides that the Takeover regulation regime will apply to all public companies, and to a private company if significant market interest is developing in its securities. In terms of s. 118 (1)(c)(i), a private company falls within the regime if the number of transfers of its securities over a 24 month period, as a percentage of all its issued securities, exceeds a threshold percentage to be prescribed, but which must be not less than 10%.

What should be the threshold percentage prescribed in terms of s. 118?

4.2 Section 123, which regulates mandatory offers applies when a person or a number of persons acting together, have a beneficial interest in more than the '*prescribed percentage*' of voting securities of a company. The Minister is required to prescribe the threshold percentage, which must not be more than 35%.

What should be the prescribed threshold percentage for the purpose of s. 123?

4.3 Section 114 regulates the process for a company to propose a scheme of arrangement to the holders of its securities. Among other things, the section requires that a report be prepared which must include 'all prescribed information relevant to the value of the securities affected by the proposed arrangement'.

What information should be prescribed for the purposes of s. 114 (3)?

5. Company Securities

5.1 Section 50 requires every company to keep a register of its issued securities in the prescribed form, and maintain it to the prescribed standards. The securities register substitutes for the register of members required in terms of the Companies Act, 1973.

Section 50(2) sets out certain categories of information that must be recorded in the securities register, and contemplates that other information will be prescribed.

What should the regulations prescribe with respect to -

(a) the form and standards for securities registers; and
(b) the information to be included in registers?

5.2 Section 96 describes a number of events that fall within the definition of an '*offer*' for the purposes of Chapter 4 of the Act, but which are nevertheless to be excluded from the meaning of an '*offer to the public*'.

One such event, contemplated in s. 96 (1)(b), would occur if the total contemplated acquisition costs of the particular securities being offered equals or exceeds a prescribed threshold value.

A second such event, contemplated in s. 96 (1)(g), would occur if an offer or series of offers for subscription is made in writing and, among other things, the subscription price for the offer, or aggregate subscription price for the series of offers, does not exceed a prescribed threshold value.

In terms of s 96 (2), the threshold minimum value contemplated in s 96 (1)(b), on the one hand, and the threshold maximum value contemplated in s. 96 (1)(g), on the other hand, are to be the same amount.

What should be the threshold value to serve as a minimum in terms of s 96 (1)(b), and the maximum in terms of s. 96 (1)(g)?

5.3 In addition to contemplating a threshold maximum value, as discussed above, s 96 (1)(g) also requires that the contemplated offer or series of must have been preceded by a prescribed period of time during which no similar offers were made by the company. In terms of s 96 (2)(b), the prescribed period must be not less than six months.

What should be the prescribed period for the purposes of s 96 (1)(g)(v)?

5.4 Section 35 (2) of the Act states that no share issued by a company has a nominal or par value. This alters the position in terms of the Companies Act

1973, sections 74- 82 of which provided, among other things, for shares having par value, or no par value, and for conversion from one to the other.

The capital regime set out in s 74 – 82 of the 1973 Act has not been replicated in the Act. Nevertheless, transitional arrangements set out in Schedule 5 address the need for conversion of remaining par value shares, and related capital accounting, to bring all companies within the new capital maintenance regime of the Act. Specifically –

In terms of Schedule 5 Item 6 (2), at the effective date, par value shares that are still held by shareholders retain their values pending conversion; and

In terms of Schedule 5 Item 6 (3), the Minister of Trade and Industry, in consultation with the Minister of Finance, are required to make regulations to take effect as of the effective date, providing for the transitional status and conversion of all remaining par value shares, and related accounts.

What process and standards should be established in terms of Schedule 5 Item 6 to give effect to the purposes of that provision?

6. Business Rescue

Chapter 6 of the Act establishes a new regime of business rescue, which replaces the judicial administration regime in the 1973 Act. A central feature of the business rescue regime is the appointment of a '*practitioner*' to be appointed to manage the company and develop a business rescue plan.

Section 138 (1) requires that to be appointed as '*practitioner*' for a company engaged in business rescue proceedings, a person '*must be a member in good standing of a profession subject to regulation by a regulatory authority prescribed by the Minister in terms of subsection (2)*.'

Although the language of s. 138 (1) seems to imply that the Minister could prescribe any number of regulated professions, that view is clearly inconsistent with s. 138 (2), which permits the Minister to '*designate one person or association within the Republic to regulate the practice of persons as practitioners in terms of this Act*.'

Subsection (2) goes on to impose criteria that must be satisfied before that one person or association qualifies for designation as the regulator of practitioners, among them that he, she or it must "*function predominantly to promote sound principles and good practice of business turnaround*". That requirement effectively eliminates from consideration any regulator of another profession.

In summary, section 138 requires the designation of a single entity to regulate a new profession of business rescue practitioners, and to admit persons to membership in that profession. Until this scheme is in place, and qualified persons have been admitted to the profession, no one can be appointed as a practitioner of a company, with the consequence that the entire business rescue regime of Chapter six cannot function.

On what basis, and following what process, should the Minister select the person or association to be designated as the regulator of the profession of business rescue practitioner?

What conditions of regulation, and procedures should be prescribed to be followed by the designated authority in terms of s. 138 (3)?

What minimum qualifications should be prescribed in terms of s. 138 (3) for admission of persons to the profession of business rescue practitioner?

What should be the tariff of practitioners' fees, which is required to be prescribed in terms of s. 143 (6)?

Appendix 2
Working Outline for draft Companies Regulations, 2010

Chapter 1 General provisions

1.1 Interpretation
1.2 Definitions (as may be required)
1.3 Standards for alternative notice of the availability of documents, as contemplated in s. 6 (11)(b)

Chapter 2 Functioning of Companies Institutions

Part A – General Administration of Institutions

2.1 Offices
2.2 Schedule of Forms and Fees
2.3 Delivery of documents
2.4 Reporting [s 188]
2.5 Access to records [s 187 (5)]
2.6 Claims that information is confidential s. 212
2.7 Inspectors certificates [s.209]

Part B – The Commission Functions

2.8 Content and standards for Registers to be maintained –
2.8.1 Register of Company Names [s. 12]
2.8.2 Register of Companies [s. 14 (1)]
2.8.3 Register of External Companies [s. 23 (5)]
2.8.4 Register of Persons not entitled to be a director [s. 69 (13)]
2.8.5 Register of Securities Prospectus [s. 99 (10)]
2.9 Regulations and forms concerning electronic filing system, as contemplated in section 6 (13) and (14).
This item is optional, and may be deferred.

Part C – The Takeover Regulation Panel

2.10 Administrative matters specific to the TRP

Part D – The Companies Tribunal

2.11 Administrative matters specific to the Tribunal

Part E – The FRSC and Specialist Committees

2.12 Administrative matters specific to the FRSC
2.13 Establishment of Specialist Committees [s. 191]
2.14 Administrative matters specific to Specialist Committees

Chapter 3 Company names and name reservations

3.1 Additional commonly recognized symbols that may be included in company names. *Optional.* [s. 11(4)]
3.2 Application to reserve a name. [s. 12(1)]
3.3 Commission notice to require applicant to serve notice of proposed name on others. [s. 12(3)(a)(i) and s 14(3)]

3.4 Commission referral of proposed name to HRC.[s. 12(3)(b) and s 14 (3)]
3.5 Application for extension of a name reservation. [s. 12(4)]
3.6 Transfer of a reserved name to another person. [s.12(5)]
3.7 Commission notice to require applicant or other interested person to show cause, etc. on suspicion of abuse of the name reservation system. [s. 12(6)]
3.8 Defensive name registration.[s. 12(9)]

Chapter 4 Incorporation, registration and winding up of companies

4.1 Standard form of Memorandum of Incorporation [s. 13(1)]
4.2 Filing of Notice of Incorporation [s. 13]
4.3 Rejection of Notice of Incorporation [s. 13(4)]
4.4 Issue and delivery of Registration Certificate [s. 14 (1)(b)(ii)]
4.5 Filing of company rules or amended rules [s. 15 (3)]
4.6 Filing Notice of Amendment of MoI [s. 16 (7)]
4.7 Commission notice requiring company to file a full copy of amended MoI [s. 16(7)(b)(ii)]
4.8 Filing Notice of Alteration of MoI [s. 17 (1)]
4.9 Filing translated MoI [s. 17 (3)]
4.10 Filing consolidated revision of MoI [s. 17 (5)]
4.11 Registration of an external company [s. 23 (1)]
4.12 Compliance notice to suspected external company requiring it to register or cease carrying on activities in the Republic. [s. 23 (6)]
4.13 Conversion of a Close Corporation to a company [Schedule 2]
4.14 Filing a winding up resolution for solvent company. [s. 80 (2)]
4.15 Recording dissolution of a company. [s. 82 (2)]
4.16 Determining that a company appears to have been inactive for at least 7 years. [s. 82 (3)(b)].
4.17 Retention of any existing forms with respect to insolvent winding up under transitional provisions held over from 1973 Act

Chapter 5 Company accountability

Part A – Company records and reports

5.1 Change of principal registered office [s. 23 (3)].
5.2 Information concerning directors, additional to that set out in s. 24 (5), and optional exemptions contemplated in s. 24 (6).
5.3 Notice of location, or changed location, of company records. [s.25]
5.4 Public access requests to company for information. [s. 26 (1)(c)]
5.5 Change of financial year. [s. 27 (4)]
5.6 Manner for keeping, standards for, and content of, financial records [s. 28 (1)]

Part B – Financial Reporting Standards

These regulations must –
(a) be made in terms of, and comply with, section 29 (4) and (5);
(b) incorporate standards for determining fair market value as contemplated in s. 112 (4).

The Financial Reporting Standards Council must be consulted in the making of these regulations.

Part C – Annual reporting

5.7 Requirements concerning annual reporting
- 5.7.1 Categories of private companies required to be audited [s. 30 (7)]
- 5.7.2 Manner and form of independent review. [s. 30 (7)]
- 5.7.3 Time, manner, form and fee for filing annual return
  - (a) for companies [s. 33 (1) and (3)]
  - (b) for external companies [s. 33 (2)]

Part D – Enhanced Accountability

5.8 Enhanced accountability regulations
- 5.8.1 Commission notice to a public or state owned company that has failed to appoint an auditor, company secretary or audit committee. [s. 84 (6)]
- 5.8.2 Information concerning auditors and company secretaries , additional to that set out in s 85 (1), and optional exemptions contemplated in s 85 (2).
- 5.8.3 Notice of appointment of auditor or company secretary, or of person ceasing to act in either capacity. [s. 85 (3)]
- 5.8.4 Minimum qualifications or criteria for members of audit committees. [s. 94 (5)]

5.9 Categories of companies required to have Social and Ethics committees, and (presumably) the minimum functions of those committees. [s. 71 (10)]

Chapter 6 Company securities

Part A - Securities Registration and Transfer

6.1 Company securities registers. [s. 50(1)(b)]
- 6.1.1 Form and standards for registers
- 6.1.2 Information to be included in registers [s. 50 (2)(b)]

6.2 Standards for company register of beneficial interests. [s. 56 (7)]

6.3 Regulations concerning uncertificated registration and transfer. [s. 49 (7)]

Part B – Securities Offerings

6.4 Threshold values and time periods in terms of s. 96 (2)

6.5 Employee share schemes and certificates. [s. 97 (2)(c) and (d)]

6.6 Application for an exclusion in terms of s.99 (7)

6.7 Documents to accompany prospectus. [s. 99 (9)]

6.8 Registration of prospectus. [. 99 (10)]

6.9 Filing agreements, etc in terms of s. 100(8)

6.10 Application to omit information in terms of s 100 (9) and (10)

6.11 Filing offer information in terms of s. 101(4)

6.12 Requirements for Prospectus
Captures material from Schedule 3 of Act as introduced

Part C – Transitional conversion of capital accounts

6.13 Manner for converting Par value shares, etc. [Schedule 5 Item 6]
In terms of item 6, the Minister of Finance must be consulted on the making of these regulations.

Chapter 7 - Company Governance

7.1 Delivery of notice of rejection of pre-incorporation contract [s. 21 (3) to (5)]

7.2 Commission notification to show cause in case of suspected reckless trading. [s. 22 (2)]

7.3 Possible generally applicable uniform minimum standards for -

(a) holders of securities to deliver notice to company eg: [s. 37 (8), 39, 56, 58, 115 (8), 164 (3), 165 (2)]

(b) company to deliver notice to holders of securities eg: [s. 39, 45(5), 56 (5), 60, 164 (2) and (4)]

7.4 Designation of company functions as “prescribed offices” [s. 66 (10)]

7.5 Requirements for publishing record dates. [s. 59 (2)(b)]

7.6 Possible generally applicable minimum standards to satisfy the “reasonableness” test for electronic participation in meetings. [s. 61 (10) and 63 (2), etc.]

7.7 Manner and form for notice of shareholders meetings. [s. 62 (1)]

7.8 Possible generally applicable minimum standards to satisfy the test for satisfactory identification for shareholder or proxy participation in meetings. [s. 63(1)].

7.9 Prescribed value of criminal fines resulting in automatic disqualification as a director in terms of [s. 69(8)(b)(iv)].

7.10 Notice of new director, or person ceasing to be a director. [s. 70 (6)]

7.11 Possible generally applicable minimum standards for directors to give notice of personal financial interest. [s. 75 (4)].

7.12 Regulations concerning fundamental transactions

7.12.1 Time and manner for company to deliver notice of special resolution to shareholders. [s. 112 (3) and s. 113 (5)]

7.12.2 Information to be included in evaluation of scheme of arrangement. [s. 114 (3)(a)].

7.12.3 Manner and form for notifying creditors of amalgamating companies. [s. 116 (1)(a)]

7.12.4 Manner, form and fee for filing Notice of Amalgamation or Merger. [s. 116(3)]

Chapter 8 Takeover Regulations

In terms of section 120 and section 223 (1)(c), the TRP (currently SRP) must be consulted in the making of these regulations.

Generally, these regulations will comprise the current Takeover Rules, except for those matters that have been incorporated directly into the Act, subject to editing for –

(a) Alignment and harmonization with the Act itself; and

(b) Policy revision as advised by the TRP.

In addition, the following items are required:

8.1 Minimum percentage threshold to bring private company within the meaning of “regulated company”. [s. 118 (2)]

8.2 Prescribed percentage threshold to trigger mandatory offer and other provisions. [s. 123 (5)]

Chapter 9 Business Rescue Regulations

Part A – Regulation of Business Rescue Practitioners

9.1 Designation of authority to regulate the profession of business rescue practitioners. [s. 138 (2)]
9.2 Conditions of regulation, and procedures to be followed by designated authority. [s. 138 (3)]
9.3 Minimum qualifications for admission of persons to profession of BR practitioner. [s. 138 (3)]
9.4 Tariff of practitioners' fees. [s. 143 (6)]

Part B – Commencement and completion of Business Rescue

9.5 Manner and form for company publishing -
(a) notice of company resolution [s. 129 (3]);
(b) notice of appointment of practitioner. [s. 129 (4)];
(c) notice of no resolution, as contemplated in s. 129 (7);
(d) notice of a court order, as contemplated in s. 131 (8).
9.6 Manner and form for applicant to court publishing notice to affected persons in terms of -
(a) s. 130 (3)(b).
(b) s. 131(2)(b)
9.7 Manner and form for filing –
(a) company resolution [s. 129]
(b) practitioner notice of termination of proceedings [s. 132]
(c) practitioner notice of substantial implementation of BR plan. [s.132 and 152 (8)]

Part C – Communication and consultation during business rescue

9.8 Manner and form for practitioner to give notice to affected persons [s. 141 (2)(b)]
9.9 Manner and form for -
(a) notifying employees at workplace [s. 144 (3)]
(b) notifying creditors [s. 145(1)]
(c) notifying security holders [s. 146 (a)]
(d) publishing proposed BR plan [s. 150 (5)]
(e) delivering notice of meeting to consider plan. [s. 151(2)]
9.10 Possible generally applicable procedures for creditors' and employee committees in terms of s 144 and 145

Chapter 10 Complaints and Remedies

Part A – Specific Remedies

10.1 Standards for companies required to maintain a protected disclosure regime [s. 159 (7)]

Part B - Alternative Dispute Resolution

10.2 Notice to submit matter to ADR [s. 166(1)]
10.3 Notice of failure of ADR [s. 166(2)]
10.4 Requirements of applicants, and criteria to be used by Commission for assessing potential ADR entities [s. 166(4)(a)(iii) and (5)]
10.5 Notice accrediting an entity to conduct ADR [s. 165 (5)]

Part C - Complaint and investigation proceedings by the Commission

10.6 (a) Form of Complaint s. 168
(b) Combining multiple complaints
(c) Procedure for consent orders
10.7 Notice of non-investigation [s. 169 (1)(a)]
10.8 Notice of Referral to ADR [s. 169 (1)(b)]
10.9 Notice to investigate [s. 169 (1)(c)]
10.10 Referral of complaint to Tribunal [s. 170 (1)(b)]
10.11 Notice of non-referral [s. 170 (1)(c)]
10.12 Issue of Compliance Notice [s. 171]
10.13 Issue of Compliance Certificate [s. 171]
10.14 Summons by Commission [s. 176 (1)]

Part D - Applications to and proceedings before the Tribunal

10.15 Application for Administrative Order granting exemption for provision of the Act, in terms of s. 6 (2) – (3)
10.16 Application concerning registration or reservation of company names See s. 12 (3) (a)(ii) / 14 (3) and 12 (3)(b)(ii) / 14 (3), each read with s. 160
10.17 Application to set aside a notice of alternation of a company MoI in terms of section 17. [s. 17 (2)]
10.18 Application by Company to extend time for holding AGM. [s. 61 (7)]
10.19 Application by shareholder for Administrative Order convening shareholders meeting. [s. 61 (11)]
10.20 Application by director or shareholder of a 1 or 2 director company to declare a director to be ineligible, disqualified or incapacitated. [s. 70 (8)]
10.21 Application by public or state owned company to set aside Show Cause Notice in terms of s. 84
10.22 Application to review Compliance Notice [s. 172]
10.23 Procedures before the Tribunal

Part E - Maximum Administrative Fines and determination of turnover

10.24 Maximum fine [s. 175 (5)]
10.25 Manner of calculating turnover [s. 175 (3)]

Annexure 1 – Table of methods and times for delivery of documents
Annexure 2 – Table of Notices and Applications
Annexure 3 – Table of Certificates
Annexure 4 – Prescribed Forms