



**MINIMUM REGULATORY REQUIREMENTS  
FOR THE ESTABLISHMENT AND OPERATION OF A CENTRAL SECURITIES  
DEPOSITORY**

**April 2018**

## **PREAMBLE**

Regulation of a central securities depository and its participants must provide minimum registration requirements to ensure that members of the public and investors are protected from the risk of loss as a result of incompetence, negligence or fraud.

The regulatory authority must satisfy itself that the directors, key responsible persons and members of a board, as well as the participants, are fit and proper to conduct financial affairs on behalf of the members of the public or investors. In addition, the regulatory authority must ensure that the regulatory framework provides for the monitoring of the central securities depository and its participants on an on-going basis and in line with international best practice, i.e. IOSCO principles.

## **THE LEGAL FRAMEWORK**

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## Interpretation

1. In this framework, unless the context otherwise indicates—

“**auditor**” means a person registered as an accountant and auditor in terms of the relevant laws and who is a member of a recognised professional institute of chartered accountants;

“**central securities account**” means an account kept by a central securities depository for a participant that reflects the number or nominal value of securities of each kind deposited and all entries made in respect of such securities;

“**central securities depository**” means a public company incorporated in terms of the laws which regulates companies or a statutory entity created by an act of Parliament through which participants provide for the holding in custody and administration of securities or an interest in securities to facilitate the evidencing of ownership and the transferring of such securities or interests;

“**central securities depository rules**” means the rules made by a central securities depository in accordance with the regulatory framework;

“**central securities repository**” means a collection of securities of the same kind held by a central securities depository;

“**certificate**” means any physical document or written instrument that evidences the ownership of or title to a security and the undertakings of the issuer of a security, and includes an instrument of transfer representing any security;

“**certificated securities**” means securities evidenced by a certificate;

“**company**” means a corporate body incorporated or registered in terms of the laws which regulates companies, and it includes a public company;

“**corporate body**” means an incorporated body wherever or however incorporated, and includes a company and close corporation;

“**deposit**” means a deposit of securities and includes a deposit by means of an entry in a securities account or a central securities account;

“**entry**” includes an electronic recording of any deposit, withdrawal, transfer, attachment, pledge, cession to secure a debt or other transaction in respect of securities;

**"issuer"** in relation to a security, means the corporate body, government or other person which issued that security and any person performing the functions of a registrar for the issuer in respect of the security;

**"key responsible person"** means the principal officer and employees or other officers with at least a five % decision-making role, or any other person responsible for the managing or overseeing, either alone or together with others, the operations and activities of the central securities depository;

**"Minister"** means the Minister responsible for Finance;

**"nominee"** means a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;

**"participant"** means a person that holds in custody and administer securities or an interest in securities and that has been appointed by the central securities depository as a participant and who is registered or licensed in terms of the regulatory framework;

**"person"** means any natural person, partnership, trust, body corporate or juristic person recognised by law;

**"principal office"** means the main place of business of the central securities depository;

**"principal officer"** means a person performing the duties and functions normally exercised by a chief executive officer;

**"security"** includes -

- (a) a share;
- (b) a bond;
- (c) a debenture;
- (d) a note;
- (e) a derivative instrument and an option, warrant, certificate or other instrument acknowledging, conferring or creating a right to subscribe to, acquire, dispose of, or convert a security;
- (f) an investment scheme, plan, programme or contract designed to entice a client or potential client to invest, use or commit money or other property with the expectation of future payment of interest, dividends, capital appreciation or other return or monetary benefit;
- (g) a money market instrument, a participatory interest in a collective investment

- scheme, a unit or other form of participation in a foreign collective investment scheme; and
- (h) an instrument declared by the regulatory authority by notice in the *Government Gazette* to be a security;

**“securities of the same kind”** means securities issued by the same issuer and of the same class;

**“securities repository”** means a collection of securities of the same kind held by a participant;

**“settlement”** means the completion of a transaction through final transfer of securities and funds between the buyer and the seller;

**“settlement bank”** means a bank designated by a central securities depository participant to settle its transactions with the central securities depository;

**“sheriff”** means the Sheriff or Messenger of a competent court of law, as appropriate;

**“subregister”** means the record of uncertificated securities administered and maintained by a participant, which forms part of the register of shareholders of the company concerned, as referred to in the laws which regulates companies; and

**“uncertificated securities”** means securities that are not evidenced by a certificate and are transferable by entry without a certificate.

## **Objects of the framework**

2. The objects of the regulatory framework are to—
- (a) increase confidence in the financial markets by—
- (i) providing for the safe, efficient and fair operation, management and maintenance of central securities depositories;
  - (ii) requiring that securities be provided in a fair, efficient and transparent manner; and
  - (iii) contributing to the maintenance of a stable financial market environment;
- (b) promote the supervision of central securities depositories and the protection of clients;
- (c) reduce systemic risk; and

- (d) promote the international competitiveness of securities.

### **Prohibition**

3. (1) Unless registered or licensed to operate or act as a central securities depository or participant under the regulatory framework, no person or entity of whatever nature may operate or act as a central securities depository or participant.

(2) A person or entity referred to in subsection (1) who is not registered or licensed under the regulatory framework as a central securities depository or participant must not behave in a manner or use a name or description which is calculated to indicate or likely lead other persons to believe or which suggests, signifies or implies that the person or entity is indeed registered or licensed or that there is some connection between that person or entity and another registered or licensed person or entity.

### **Limitation on control of a central securities depository**

4. (1) No person may, without the prior approval of the regulatory authority, acquire or hold shares or any other interest in a central securities depository, if the acquisition or holding results in that person, directly or indirectly, alone or with one or more associates, acquiring or holding control of the central securities depository.

(2) If the regulatory authority is satisfied on reasonable grounds that the retention of a particular shareholding in a central securities depository by a particular person will be prejudicial to the central securities depository, the regulatory authority may proceed in the use of its administrative prerogatives assigned by law or under the terms established in the law or apply to an appropriate court or appropriate tribunal for an order—

- (a) compelling the person to reduce, within a period determined by the court or tribunal, that shareholding to a shareholding with a total nominal value not exceeding 20 % of the total nominal value of all the issued shares or such other percentage as determined by the regulatory authority, of the central securities depository; and
- (b) limiting, with immediate effect, the voting rights that may be exercised by that person by virtue of that shareholding to 20 % of the voting rights or

such other percentage as determined by the regulatory authority,  
attached to all the issued shares of the central securities depository.

### **Application for registration or licensing**

5. (1) A public company incorporated or registered in terms of the laws which regulates companies or a statutory entity created by an act or Parliament that intends to establish or operate a central securities depository must apply in writing to the regulatory authority, the application to be in the manner and form required by the regulatory authority, and the application must be accompanied by—

- (a) the proposed central securities depository rules;
- (b) the applicant's incorporation or founding documents, its most recent financial statements if applicable, details of its principal office and the registered office of the central securities depository;
- (c) such other information as may be required by the regulatory authority; and
- (d) the applicable application fee.

(2) If the applicant is a public company which is foreign owned, it must submit proof of compliance with applicable requirements of the regulatory authority from its home country.

(3) Prior to making an application for registration or licensing referred to in subsection (1), the applicant must give notice of the proposed application in two national newspapers at the expense of the applicant, stating—

- (a) the name, or previous name where applicable, of the applicant;
- (b) the period within which objections to the application may be lodged with the regulatory authority;
- (c) the place where the proposed central securities depository rules may be inspected by members of the public.

(4) Provided that, after consideration of any objections received as a result of the notice referred to in subsection (3), the regulatory authority is satisfied that the applicant complies with the registration or licensing requirements in terms of section 6, the regulatory authority must register or license the applicant as a central securities depository subject to any conditions which the regulatory authority may consider reasonable and appropriate, and must issue the applicant with a certificate of registration or licence.



(5) In the event that the application for registration or licensing is refused by the regulatory authority or is granted subject to conditions, the regulatory authority must advise the applicant of the refusal or conditions by giving notice to the applicant containing the reasons for the refusal or the conditions, and must give the applicant a reasonable opportunity to be heard by specifying a period during which the applicant may make representations in writing to the regulatory authority.

(6) A central securities depository must comply with the conditions subject to which it was registered or licensed.

### **Registration or licensing requirements**

**6.** Before registering or licensing the applicant, the regulatory authority must be satisfied on reasonable grounds that—

- (a) every director and key responsible person of the applicant, and where applicable members of the board, are fit and proper within the meaning of the regulatory framework;
- (b) the incorporation or founding documents of the applicant are not inconsistent with the provisions of the regulatory framework;
- (c) the direct or indirect control of the applicant is not likely to be contrary to the interests of clients and relevant stakeholders;
- (d) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision by the regulatory authority;
- (e) the central securities depository rules of the applicant are consistent with the regulatory framework and international standards;
- (f) the granting of the approval is in the public interest;
- (g) the applicant has sufficient financial resources for the proper exercise or carrying out the powers, duties and functions conferred upon or assigned to a central securities depository;
- (h) the applicant has the attributes reasonably necessary and adequate to—
  - (i) provide the financial services with professional integrity, prudence, proper skill and due diligence;

- (ii) maintain a sound financial position and not cause or further instability in the financial system; and
  - (iii) comply with the regulatory framework; and
- (i) the applicant has supplied full, complete and accurate information as required by the regulatory authority.

### **Fiduciary duty**

7. Each director or key responsible person of any entity that controls a central securities depository and every director, key responsible person and where applicable, each member of the board of a central securities depository, owes a fiduciary duty and a duty of care and skill to that central securities depository.

### **Appointment as director, key responsible person or member of the board**

8. (1) Subject to subsection (2), a person must not be appointed as a director, key responsible person or, where applicable, a member of the board of a central securities depository if that person—
- (a) is not a person of integrity and honesty;
  - (b) is prohibited from appointed as a director of a company in terms of the laws which regulates companies;
  - (c) has been found guilty of acting fraudulently, dishonestly, unprofessionally or dishonorably in any criminal or civil proceedings by a court of law or appropriate tribunal locally or elsewhere;
  - (d) has been disqualified or found guilty by any professional body, or regulatory authority either in the local jurisdiction or elsewhere, of having acted dishonestly, fraudulently or incompetently;
  - (e) presided over a failed company or mismanaged a failed company either locally or elsewhere; or
  - (f) had authority to carry on business refused, suspended or withdrawn by any regulatory authority or professional body on account of incompetence, mismanagement, dishonesty, or negligence.

(2) The central securities depository should be satisfied that there is an adequate period, the minimum being five years, for rehabilitation of unfit persons where rehabilitation is deemed appropriate.

(3) A person who accepts an appointment in contravention of subsection (1) commits an offence.

(4) If a central securities depository makes an appointment in contravention of subsection (1)—

(a) without making reasonable enquiry as to whether the person appointed is disqualified under subsection (1); or

(b) knowing that the person appointed is so disqualified,

the regulatory authority may impose a penalty upon the central securities depository.

(5) A central securities depository must, within the period prescribed by the regulatory authority of the appointment of a new director, key responsible person or member of a board, inform the regulatory authority of the appointment together with such information on the matter as the regulatory authority may require.

(6) The provisions of subsection (5) must not be construed so as to render the appointment of a director, key responsible person or member of a board of a central securities depository subject to the approval of the regulatory authority.

(7) If it appears to the regulatory authority that a director, key responsible person or member of the board of a central securities depository is disqualified under subsection (1), the regulatory authority may, subject to subsection (8), instruct the central securities depository to take all necessary steps to have that person removed as a director, key responsible person or member of the board.

(8) The regulatory authority must, before giving an instruction under subsection (7)—

(a) inform the central securities depository and the person concerned of its intention to give such an instruction;

(b) give the central securities depository and the person reasons for the intended instruction; and

(c) call upon the central securities depository and the person to show cause within a period prescribed by the regulatory authority why the instruction should not be given.

(9) If the regulatory authority instructs the central securities depository to have an officer or member of the board removed, the central securities depository must have the person removed within a period prescribed by the regulatory authority and must ensure that the person in question

does not in any way, whether directly or indirectly, concern himself or herself with or take part in the management of the central securities depository.

(10) If a central securities depository fails to comply with subsection (9), the regulatory authority may, in respect of such failure, impose a penalty upon the central securities depository for every day during which such failure continues.

(11) The regulatory authority must afford the central securities depository the right to be heard before imposing any penalty under this section.

### **Principal office and principal officer**

- 9.** (1) A central securities depository must—
- (a) have a principal office in the country of registration where it must hold and maintain its records and accounts; and
  - (b) appoint a fit and proper individual as a principal officer who must be permanently resident in the country of registration.
- (2) The principal officer must be a member of the board of the central securities depository and is authorised to act on behalf of the central securities depository to ensure compliance with the regulatory framework.

### **Appointment of auditor**

- 10.** (1) A central securities depository must appoint and at all times have an auditor or firm of auditors to be the auditor for its business.
- (2) A central securities depository must not appoint as its auditor an auditor who is, or a firm of auditors which is, a director, officer, employee or shareholder or other owner of the central securities depository or has any financial interest in the central securities depository.

### **Duties and functions of a central securities depository**

- 11.** (1) A central securities depository must—
- (a) issue and enforce the central securities depository rules;
  - (b) facilitate the admittance of securities into the central securities depository;

- (c) facilitate the deposit and withdrawal of certificates in respect of securities admitted in the central securities depository;
- (d) facilitate the dematerialisation of securities;
- (e) open, maintain and close securities accounts;
- (f) establish a proper and efficient system for the verification, inspection, identification and recording of book-entry securities with the central securities depository;
- (g) facilitate the efficient transfer of book-entry securities;
- (h) facilitate the registration of dealings in book-entry securities;
- (i) facilitate the efficient collection of fees and other charges that may be required;
- (j) guard against falsification of any records or accounts required to be kept or maintained under the regulatory framework;
- (k) supervise and ensure compliance by participants with the regulatory framework and the central securities depository rules;
- (l) maintain central securities accounts with due regard to the interests of participants and their clients;
- (m) notify a participant in writing or as otherwise agreed to by the participant of an entry made in the participant's central securities account;
- (n) balance and reconcile the aggregate of the central securities accounts with the records of the relevant issuer—
  - (i) in respect of each kind of certificated security, at least once every six months;
  - (ii) in respect of each kind of uncertificated security—
    - (aa) if that aggregate has not changed, at least once every month;
    - (bb) if that aggregate has changed, on the business day after such change;
- (o) administer and maintain a record of uncertificated securities deposited with it;
- (p) disclose to participants and issuers the fees and charges required by it for its

services;

- (q) on request disclose—
    - (i) to the regulatory authority, information about the securities held by a participant in a central securities account;
    - (ii) to an issuer, information about the securities issued by that issuer and held by participants in central securities accounts;
  - (r) if a participant ceases to be a participant, notify the regulatory authority immediately;
  - (s) conduct its business in a prudent manner and with due regard to the rights of participants, clients and issuers; and
  - (t) perform other functions that are necessary to ensure orderly dealings in admitted or dematerialised securities, or as the regulatory authority may from time to time prescribe.
- (2) A central securities depository may—
- (a) be retained as a securities clearing house by a registered or licensed exchange if the central securities depository also performs the functions of a securities clearing house if registered or licensed as a clearing house;
  - (b) designate one or more banks as a settlement bank for the settlement of funds in respect of transactions cleared through a central securities depository;
  - (c) issue directives pursuant to section 19;
  - (d) amend or suspend the central securities depository rules subject to regulatory approval;
  - (e) hold all securities of the same kind deposited with it by a participant, collectively in a separate central securities repository; and
  - (f) access the records of uncertificated securities administered and maintained by its participants if deemed necessary.

## **Appointment of a participant**

**12.** (1) A central securities depository may, subject to section 13, appoint in writing, fit and proper participants comprising the following:

- (a) a registered or licensed dealing member of a stock exchange;
- (b) a custodian, stockbroker, or a person registered or licensed by the regulatory authority as a dealer in securities;
- (c) a unit trust scheme, collective investment scheme or a managing company registered or licensed by the regulatory authority;
- (d) a bank;
- (e) an institutional investor;
- (f) a stock exchange; or
- (g) a body corporate of a type prescribed by the regulatory authority.

(2) A central securities depository must not appoint a participant unless the participant complies with the following requirements:

- (a) the participant must be a person of integrity and honesty;
- (b) the participant must not have—
  - (i) been found guilty of acting fraudulently, dishonestly, unprofessionally or dishonorably in any criminal or civil proceedings by a court of law or appropriate tribunal locally or elsewhere;
  - (ii) been disqualified or found guilty by any professional body, or regulatory authority either in the local jurisdiction or elsewhere, of having acted dishonestly, fraudulently, or incompetently;
  - (iii) presided over a failed company or mismanaged a failed company either locally or elsewhere; or
  - (iv) had authority to carry on business refused, suspended or withdrawn by any regulatory authority or professional body on account of incompetence, mismanagement, dishonesty, or negligence.

(3) The central securities depository should be satisfied that there is an adequate period, the minimum being five years, for rehabilitation of unfit persons where rehabilitation is deemed appropriate.

### **Registration or licensing of a participant**

**13.** (1) A central securities depository must apply to the regulatory authority for the registration or licensing of the participants appointed in terms of section 12 by submitting a copy of the list of such participants maintained by the central securities depository, together with any required fee for each such participant.

(2) A central securities depository must submit to the regulatory authority an update of the list referred to in subsection (1) when there has been an addition or deletion of a participant, together, in the case of additional participants to be registered or licensed, with the required fee for each such additional participant.

(3) On receipt of a list referred to in subsection (1) and the required fee, the regulatory authority must register or license those persons as participants.

(4) The term of a registration or licensing under this section shall expire on March 31 of each year or such other date as the regulatory authority may specify, and may be renewed for a subsequent year on payment of the applicable fee required by the regulatory authority.

### **Duties and functions of a participant**

- 14.** (1) A participant must—
- (a) perform the functions approved for the central securities depository under the central securities depository rules;
  - (b) deposit securities that are deposited with it, with a central securities depository unless the client expressly directs otherwise in writing;
  - (c) maintain a securities account for a client in respect of deposited securities;
  - (d) reflect the number or nominal value of each kind of securities deposited in a securities account;
  - (e) administer and maintain a record of all securities deposited with it in accordance with the central securities depository rules;



- (f) record all securities of the same kind deposited with it in a subregister if so required by the central securities depository rules;
- (g) disclose to clients and issuers the fees and charges required by it for its services;
- (h) notify a client in writing, or as otherwise agreed to by the client, of an entry made in the client's securities account;
- (i) on request disclose, produce or make available—
  - (i) to the central securities depository or regulatory authority, information about the securities recorded in a securities account; and
  - (ii) to an issuer, information about the securities issued by that issuer and recorded in a securities account;
- (j) maintain a central securities account with a central securities depository, and may—
  - (i) deposit securities with or withdraw securities from that central securities depository; or
  - (ii) transfer, pledge or cede an interest in securities through that central securities depository;
- (k) exercise the rights in respect of securities deposited by it with a central securities depository in its own name on behalf of a client when so instructed by the client;
- (l) balance and reconcile the aggregate of the securities accounts with the central securities account on a daily basis; and
- (m) perform such other functions as the regulatory authority may direct from time to time.

## **Nominees**

- 15.** (1) A participant must—
- (a) maintain a list of approved nominees;
  - (b) submit a copy of such list to the central securities depository of which it is a participant; and

- (c) submit to the central securities depository an update of the list at the end of each month in which there has been an addition or deletion of a nominee.
- (2) A central securities depository must submit a copy of the list referred to in subsection (1) to the regulatory authority.

### **Central securities depository rules**

**16.** (1) The central securities depository rules must be approved by the regulatory authority and published, after registration or licensing of the central securities depository, in the official *Government Gazette*.

(2) The central securities depository rules must be consistent with the provisions of the regulatory framework.

(3) The central securities depository rules, at a minimum,—

- (a) must provide for equitable criteria for the acceptance and expulsion of a participant and for such acceptance and expulsion to be in the interests of issuers and clients;
- (b) must provide for arrangements for certificated securities to be converted to uncertificated securities and for issuers to issue uncertificated securities;
- (c) must provide for adequate steps to be taken by the central securities depository, or a person to whom the central securities depository has delegated its investigative and disciplinary functions, to investigate and discipline a participant or an officer or employee of a participant who contravenes or fails to comply with the regulatory framework or the central securities depository rules of the central securities depository and must require a report on the disciplinary proceedings to be furnished to the regulatory authority within a specified period after the completion of such proceedings;
- (d) must provide for the manner in which a participant, who is believed to—
  - (i) be able to furnish any information on the subject of any investigation; or
  - (ii) have in that participant's possession or under that participant's control any document, which has bearing upon that subject,

may be required to appear before a person conducting an investigation, to

be interrogated or to produce such document;

- (e) must provide for requirements in respect of a participant's financial soundness and valid financial cover that the participant must hold in respect of—
  - (i) the participant's actual and potential liabilities;
  - (ii) the participant's conditional and contingent liabilities to the central securities depository; and
  - (iii) liabilities which existed before or accrue after a person has ceased to be a participant;
- (f) must require that—
  - (i) dividends paid and other payments owing by issuers in respect of securities are paid by such issuers to participants or clients and, if applicable, by participants to clients;
  - (ii) all notices regarding rights and other benefits accruing to the owners of securities deposited with the central securities depository are conveyed to participants and clients; and
  - (iii) the rights of participants or clients are not in any way diminished by the fact that securities held by them or on their behalf are held collectively in a central securities repository;
- (g) must require that where a participant agrees, or is otherwise required to—
  - (i) receive monies in respect of securities on behalf of clients from a central securities depository or issuer, that such monies are, in fact, paid to the clients concerned;
  - (ii) convey to clients all information regarding rights and other benefits accruing to the securities held on behalf of such clients, that such information is, in fact, conveyed; and
  - (iii) give effect to the lawful instructions of clients with regard to voting rights and other matters, that the necessary actions are, in fact, taken;
- (h) must require that a participant, on written request from a client to withdraw securities or an interest in securities held in a securities repository or central securities repository, deliver a certificate or written instrument evidencing the same

number of securities, or securities of the same nominal value and of the same kind, as the securities held on behalf of that client in the securities repository or central securities repository, as long as the client has a sufficient unencumbered credit balance of those securities with the participant;

- (i) must require that a participant's central securities account does not show a debit balance;
- (j) may provide that a central securities depository may refuse to accept securities issued by any particular issuer with due regard to the clearing and settlement arrangements of a registered exchange for transactions in those securities;
- (k) must provide for—
  - (i) the duty of a client to disclose to a participant, and the duty of a participant to disclose to a central securities depository, information about a beneficial, limited or other interest in securities deposited by a client with a participant or by a participant with a central securities depository, as the case may be; and
  - (ii) the manner, form and frequency of such disclosure;
- (l) must provide for the manner in which a central securities depository or a participant must keep records of clients or owners or beneficial owners of securities and limited or other interests in securities;
- (m) must provide for the manner in which participants must give instructions to a central securities depository;
- (n) if the central securities depository is retained as a securities clearing house by a registered or licensed exchange, must provide for the manner in which the central securities depository may regulate, consistent with the exchange rules, the securities clearing and settlement functions to be performed by participants in the securities clearing and settlement process;
- (o) must provide for the purposes for which a central securities depository may issue directives;
- (p) must provide for the manner in which a participant must hold and administer securities;

- (q) must provide for the approval by the central securities depository of a nominee of a participant, or any other nominee who has an account with a participant, which nominee holds securities in a securities repository or central securities repository;
- (r) must provide for provisions in the case of insolvency or bankruptcy, which provisions shall be subject to directives of the regulatory authority;
- (s) must provide for such professional indemnity policies, prescribed by the regulatory authority, to be maintained at all times;

and

- (t) must include such other matters as may be required by the regulatory authority.

(4) A central securities depository may, with the approval of the regulatory authority, make central securities depository rules on matters additional to those listed in subsection (3).

(5) A central securities depository rule made under this section, is binding on the central securities depository, a participant, a nominee, an issuer of securities deposited with the central securities depository, their officers and employees, and on clients.

### **Alterations to or suspension of central securities depository rules by a central securities depository**

**17.** (1) A central securities depository must not amend or suspend any of its rules, except with the prior written approval of the regulatory authority.

(2) A central securities depository which intends to amend or suspend any of its rules must apply in writing to the regulatory authority, in the form and manner as required by the regulatory authority, after giving notice of the intended amendment or suspension to the public and any interested parties.

### **Amendment of central securities depository rules by the regulatory authority**

**18.** (1) The regulatory authority may—

- (a) if there exists exceptional circumstances;
- (b) if it is necessary to achieve the objects of the regulatory framework; and
- (c) after consultation with the central securities depository concerned,

amend the rules of that central securities depository.

(2) The regulatory authority must in writing specify any amendments made and the date on which the amendment must come into force, whereafter the amended rules must be published in the official Government *Gazette*.

### **Issue of directives by a central securities depository**

**19.** A central securities depository may give directives to an issuer of securities or a participant in performing its duties and functions under the regulatory framework, and the issuer or participant must comply with such directives.

### **Duty of central securities depository to keep records and accounts**

**20.** (1) The regulatory authority may prescribe the records and accounts to be maintained and held by the central securities depository.

(2) A central securities depository must, at a minimum, keep records and accounts to show particulars of—

- (a) transfers of book-entry securities to and from a securities account;
- (b) income received from transfer secretaries or transfer agents, fees, charges and other sources, and expenses and other payments made or paid by the central securities depository;
- (c) assets and liabilities including contingent liabilities of the central securities depository;
- (d) all board and shareholder meetings as well as meetings of every standing committee of the board;
- (e) its shareholders, detailing the full names and physical addresses of all shareholders as well as the percentage of shareholding;
- (f) statistical information on depository, clearing and settlement activities;
- (g) all account holders; and
- (h) such other matters as may be required by the regulatory authority.

### **Audit of records and accounts and annual report**

- 21.** (1) A central securities depository must cause an audit to be conducted in respect of its records and accounts at the end of each financial year.
- (2) The audit must include a verification of the accuracy of the details shown in the records and accounts.
- (3) The central securities depository must within a period prescribed by the regulatory authority after the end of its financial year submit to the regulatory authority—
- (a) a copy of the duly certified audit report and audited financial statements that fairly present the financial affairs and status of the central securities depository; and
  - (b) its annual report containing such details as the regulatory authority may determine.
- (4) The regulatory authority may, by notice in writing, direct that an audit be conducted of an aspect of or all of a central securities depository's operations at the expense of the central securities depository.
- (5) In addition to the provisions of subsection (3), the central securities depository must submit any reports as required by the regulatory authority at specific intervals.

### **Right of the regulatory authority to attend meetings and obtain documents**

- 22.** (1) The regulatory authority may attend any meeting of the entity that controls a central securities depository or a committee of that entity, and may take part, but may not vote, in all the proceedings at such meeting.
- (2) A central securities depository must furnish the regulatory authority with all notices, minutes and documents which are furnished to shareholders or other owners of the entity that controls the central securities depository or a committee of that entity.

### **Central securities depository to provide assistance to the regulatory authority**

- 23.** (1) A central securities depository must provide assistance to the regulatory authority for the performance of the regulatory authority's functions.

(2) The regulatory authority and its authorised representatives must have access to any part of the premises of a central securities depository at reasonable times to ensure compliance with the regulatory framework.

(3) The regulatory authority may, in accordance with the provisions of appropriate regulatory frameworks, at any time instruct one or more inspectors to carry out an investigation of the business or affairs, or any part of the business or affairs of the central securities depository.

### **Cancellation or variation of registration or licensing**

**24.** (1) The regulatory authority may cancel the registration or licensing, or vary the conditions of registration or licensing of a central securities depository, inclusive of the imposition of additional conditions if—

- (a) the central securities depository has failed to comply with the regulatory framework;
- (b) the central securities depository has defeated the objects of the regulatory framework;
- (c) the central securities depository has failed to comply with the central securities depository rules;
- (d) the central securities depository's affairs are conducted in a manner which is not in the best interests of its clients or stakeholders or the public interest;
- (e) the central securities depository made a material misrepresentation or failed to provide information that was materially relevant in its application for registration or licensing;
- (f) the central securities depository no longer meets the requirements for registration or licensing;
- (g) the central securities depository has provided financial services without professional integrity, prudence, proper skill and due diligence;
- (h) the central securities depository is in an unsound financial position;
- (i) the central securities depository has failed to comply with a directive, request or requirement of the regulatory authority issued under the regulatory framework;
- (j) the central securities depository has failed to give effect to a decision of any court or appropriate tribunal;



- (k) the central securities depository has ceased to operate or has failed to commence operating within a reasonable time after being registered or licensed;
- (l) the central securities depository or any director, key responsible person or member of the board is convicted of being involved in financial crime; or
- (m) the central securities depository's directors, key responsible persons or members of the board no longer meets the fit and proper requirements within the meaning of the regulatory framework or has engaged in conduct identified as misconduct.

(2) The regulatory authority must give notice to the central securities depository concerned of the intention to take any action referred to in subsection (1), together with the reasons therefor, and must give the central securities depository a reasonable opportunity to be heard by specifying a period determined by the regulatory authority during which the central securities depository may make representations to the regulatory authority.

(3) Subject to such conditions as the regulatory authority may impose, the regulatory authority may provisionally suspend the registration of the central securities depository without giving notice and an opportunity to be heard pursuant to subsection (2) if the regulatory authority is satisfied, on reasonable grounds, that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of their clients or the financial system of the country, but the regulatory authority must—

- (a) give the central securities depository the notice and an opportunity to be heard and make representations as soon as reasonably possible; and
- (b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or the registration or licensing of the central securities depository can be cancelled.

(4) The regulatory authority must make public any suspension or cancellation of registration or licensing and the reasons therefor, by notice in the *Government Gazette* or by means of any other appropriate public statement.

(5) In the event that the registration or licensing of a central securities depository is cancelled or suspended, the regulatory authority must take such steps and may impose such conditions as are necessary to achieve the objects of the regulatory framework, which steps may include the transfer of the business of the central securities depository to another central securities depository, as appropriate.

### **Uncertificated securities**

**25.** (1) Certificated securities may be converted to uncertificated securities and an issuer may issue uncertificated securities despite any contrary provision in—

- (a) any other law;
- (b) the common law;
- (c) an agreement;
- (d) the articles of association of the issuer;
- (e) a prospectus; or
- (f) any other conditions applicable to the issuing of securities.

(2) An issuer and a central securities depository and its participants must make arrangements in accordance with central securities depository rules for uncertificated securities to be evidenced by way of entry.

(3) An issuer has the same obligations in respect of uncertificated securities as it has in respect of certificated securities except that no certificate or written instrument is issued in respect of uncertificated securities.

### **Responsibilities of issuer of uncertificated securities**

**26.** An issuer of uncertificated securities must—

- (a) record in its register the number or nominal value of each kind of uncertificated securities issued by it;
- (b) maintain separate records for each central security depository holding uncertificated securities unless all those securities are held by one central securities depository;
- (c) if required by section 27(1), record the name of that central securities depository or its wholly owned subsidiary as the registered holder of the uncertificated securities;
- (d) balance and reconcile with a central securities depository the record referred to in paragraph (a) in respect of each kind of uncertificated security—

- (i) if that record has not changed, at least once every month; and
  - (ii) if the record has changed, on the business day after such change; and
- (e) comply with any other requirements set by the regulatory authority.

### **Registration of securities**

**27.** (1) The regulatory authority may direct that any securities held by a central securities depository must, with due consideration of the central securities depository rules, be registered in the name of that central securities depository or its wholly owned subsidiary, that has been approved by the regulatory authority.

(2) A central securities depository or participant must not become the owner, co-owner, holder, pledgee or cessionary for the purpose of securing a debt, of securities merely because of—

- (a) a deposit of securities; or
- (b) the registration in its name of—
  - (i) securities;
  - (ii) limited rights in securities;
  - (iii) other rights in securities;
  - (iv) benefits in respect of securities; or
  - (v) benefits accruing to securities.

(3) Subsection (2) also applies to a wholly owned subsidiary of a central securities depository or participant.

### **Ownership of securities**

**28.** (1) Where securities of any kind—

- (a) are deposited with a participant or a central securities depository; or

- (b) accrue to the owner of securities held by a participant in a securities repository or a central securities depository,

the person who was the owner of the securities at the time of deposit or accrual becomes entitled to an interest as co-owner of all the securities of the same kind comprised in the securities repository or central securities repository, as the case may be.

(2) In so far as any limited right exists in respect of any securities at the time of a deposit or accrual referred to in subsection (1), such limited right extends to the interest of such co-owner and to any securities delivered to that co-owner.

(3) The interest of a co-owner, client or participant in all the securities in a securities repository or central securities repository, as the case may be, must be calculated by reference to the proportion that the number or nominal value of securities deposited by or on behalf of that co-owner, client or participant and accruing to such securities, bears to the total number or nominal value of all securities of that kind held in the securities repository or central securities repository.

(4) A written statement issued by or on behalf of—

- (a) a participant in respect of an owner of securities or of a client; or
- (b) a central securities depository in respect of a participant,

and specifying the interest of that owner, client or participant, is *prima facie* evidence of the title or interest of that person in such securities.

### **Transfer of securities**

**29.** Transfer of an interest in securities held by a central securities depository or participant must be effected by entry in the central securities account or securities account of the transferor and the transferee kept by the central securities depository or the participant, as the case may be.

### **Pledge or cession of securities to secure debt**

**30.** (1) A pledge or cession to secure a debt, in respect of an interest in securities held by a central securities depository or participant or in a securities account held on behalf of a participant, must be effected by entry in the central securities account or the securities account of—

- (a) the pledgor in favour of the pledgee specifying the name of the pledgee, the interest in the securities pledged and the date of entry; or

- (b) the cedent in favour of the cessionary specifying the name of the cessionary, the interest in the securities ceded and the date of entry.
- (2) An interest in securities referred to in subsection (1) may not be transferred except with the written consent of the pledgee or cessionary, as the case may be.
- (3) The pledgee or cessionary of an interest in securities referred to in subsection (1) is entitled to all the rights of a pledgee of movable property or cessionary of a right in movable property pledged or ceded to secure a debt, as applicable.
- (4) Subsections (1), (2) and (3) also apply, with the changes required by the context, to the pledge and cession to secure a debt by one participant to another of an interest in securities held by a central securities depository in a central securities account.

### **Delivery of securities**

**31.** Subject to sections 28 and 30, the owner of an interest in securities held by a participant in a securities repository or a participant holding an interest in securities in a central securities repository, as the case may be, is at all times entitled, on written request for withdrawal, to delivery, within a reasonable time as prescribed by the regulatory authority, by the participant or central securities depository concerned, of a certificate or written instrument evidencing the same number of securities, or securities of the same nominal value and of the same kind as the interest in securities held on behalf of such owner or participant, as long as such owner or participant has a sufficient unencumbered credit balance of those securities in that owner's securities account or in that participant's central securities account, as the case may be.

### **Records**

**32.** If the records of a central securities depository are inconsistent with those of a participant regarding securities deposited with the central securities depository by the participant, the records of the central securities depository are deemed to be correct until the contrary is proved.

### **Warranty**

**33.** (1) Every person, whether a client or participant, who deposits securities with a participant or central securities depository, as the case may be, is deemed to warrant that such person is entitled to deposit such securities and that any document or instruction relating to such securities lodged or given by that person is genuine and correct in all respects and that person is deemed to have agreed to indemnify the participant or the central securities depository against any claim made upon the participant or central securities depository and against any loss suffered by

the participant or central securities depository arising out of such deposit or breach of warranty.

(2) A central securities depository is not deemed to have given a warranty or indemnity referred to in subsection (1).

### **Recognition of trust**

**34.** A central securities depository is not obliged to recognise any relationship of trust or agency of its participants in respect of securities.

### **Attachment**

**35.** (1) The attachment of an interest in securities deposited with a participant and held in a securities repository or central securities repository is only complete when—

- (a) notice of the attachment has been given in writing by the sheriff to the participant;
- (b) the sheriff has taken possession of any securities account as evidenced by a written acknowledgement issued by the participant or the sheriff has certified that the sheriff has been unable, despite diligent search, to obtain possession of such written acknowledgement; and
- (c) the sheriff has made an entry of the attachment on such securities account or caused it to be made by such participant.

(2) The sheriff may upon exhibiting the original of the warrant of execution to the participant enter upon the premises where such account is kept and make an inventory and valuation of the interest attached.

### **Amalgamation**

**36.** (1) Two or more central securities depositories may, with the approval of the regulatory authority and subject to such conditions as the regulatory authority may impose, amalgamate or merge.

(2) In the event that an amalgamation referred to in subsection (1) takes place—

- (a) all the assets and liabilities of the amalgamating companies including any insurance, guarantee, compensation fund or other warranty owned or maintained by the amalgamating companies to cover any liabilities to clients of participants, vest in and become binding upon the amalgamated company or upon such other entity

acceptable to the regulatory authority as the parties to the amalgamation may designate;

- (b) the amalgamated company has the same rights and is subject to the same obligations as each of the amalgamating companies had immediately before the amalgamation;
- (c) all agreements, appointments, transactions and documents entered into, made, executed or drawn up by, with or in favour of the amalgamating companies and in force immediately before the amalgamation remain in full force and effect and must be construed for all purposes as if they had been entered into, made, executed or drawn up by, with or in favour of the amalgamated company;
- (d) any bond, pledge, guarantee or other instrument to secure future advances, facilities or services made by any of the amalgamating companies and which was in force immediately prior to the amalgamation, remains in full force and effect and must be construed as a bond, pledge, guarantee or instrument given to or in favour of the amalgamated company;
- (e) any claim, right, debt, obligation or duty accruing to any person against any of the amalgamating companies or owing by any person to any of the amalgamating companies, is enforceable against or owing to the amalgamated company;
- (f) any legal proceedings that were pending or could have been instituted against any of the amalgamating companies before the amalgamation may be continued or instituted against the amalgamated company, subject to any law governing prescription; and
- (g) the registration or licensing of the amalgamating companies remains vested in the amalgamated company, providing that the amalgamated company complies with all the requirements of the regulatory framework.

### **Transfer of assets and liabilities**

**37.** (1) A central securities depository may, with the approval of the regulatory authority and subject to such conditions as the regulatory authority may impose, transfer any of its assets and liabilities to any other central securities depository.

(2) In the event that a transfer of assets and liabilities referred to in subsection (1) takes place, section 36(2) shall apply with any changes made necessary by the context.

## **Guarantee fund**

- 38.** (1) A central securities depository must establish and maintain a guarantee fund for the purpose of providing indemnity against default in respect of payments for or delivery of securities by a central securities depository participant and of obligations of participants towards the central securities depository.
- (2) The assets of the guarantee fund consist of moneys accruing to the fund and contributions specified in the central securities depository rules.
- (3) Where the central securities depository has made payment from the guarantee fund in relation to a default, even if the central securities depository is not a counter party to the transaction between selling and buying participants, it shall be subrogated to the rights and powers of the participant not in default for the purpose of the seizure and sale of unpaid securities and of operating the guarantee fund.
- (4) The central securities depository may impose a fee for the purpose of administering and maintaining insurance, a guarantee or compensation fund or other warranty.
- (5) The central securities depository must maintain, separate from its own records and accounts, such records and accounts pertaining to the guarantee fund as prescribed by the regulatory authority.