

South Africa

Financial Markets Act, 2012

Conditions for demutualisation, 2013

Board Notice 94 of 2013

Legislation as at 31 May 2013

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Conditions for demutualisation, 2013

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South Africa
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Conditions for demutualisation, 2013
Board Notice 94 of 2013

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Under section [63\(1\)](#) of the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), I, Dube Phineas Tshidi, Registrar of Securities Services, hereby determine the Conditions, as set out in the Schedule, with which exchanges, central securities depositories or independent clearing houses applying for approval to demutualise, must comply.

D P Tshidi

Registrar of Securities Services

1. Definitions

In these conditions,

“**the Act**” means the Financial Markets Act, 2012 ([Act No. 19 of 2012](#)), and any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned to it.

2. Purpose of conditions

The information sought in terms of these conditions is required to enable the registrar to assess an application by an exchange, central securities depository or independent clearing house for approval to demutualise and for the registrar to be satisfied that the exchange, central securities depository or independent clearing house, once demutualised, will continue to meet the requirements and serve the objects of the Act.

3. Application for approval

A mutual exchange, central securities depository or independent clearing house that applies to the registrar for approval to convert to a company must—

- (a) submit a written application on form FM 2 to the registrar; and
- (b) furnish the information specified in the Annexure to Form FM 2.

4. Address

Applications must be submitted to:

P O Box 35655	41 Matroosberg Road
Menlo park	Riverwalk Office Park
0102	Block B
	Ashlea Gardens Ext 6
	0081

5. Commencement

This Notice comes into operation on the same date on which the Act comes into operation.

Form FM 2

Application under section 63(1) of the Financial Markets Act, 2012 (*Act No. 19 of 2012*) for the approval of the demutualisation of an exchange, central securities depository or independent clearing house

Financial Markets Act 2012 (*Act No. 19 of 2012*)

The Registrar of Securities Services

1. I _____, the chief executive officer of the _____ (hereunder referred to as the applicant), being specifically authorised thereto by the controlling body of the applicant, apply on behalf of the applicant, for approval of the demutualisation of the applicant.
2. The prescribed application fee of _____ is enclosed.
3. The name of the demutualised entity will be _____

Signed at _____ on this ____ day of _____ 20 ____

Chief Executive Officer

Witnesses:

1. _____
2. _____

Annexure to Form FM 2

The following information must accompany an application for the approval of the demutualisation of an exchange, central securities depository or independent clearing house:

1. A statement by the chief executive officer of the exchange, central securities depository or independent clearing house confirming that 75% or more of the votes cast by the owners of such organisation, present and voting either in person or by proxy at a meeting of such owners is in favour of the proposed demutualisation.
2. The following administrative information:
 - (a) A copy of the proposed memorandum of incorporation of the company to be formed;

- (b) the postal, physical and electronic mail addresses at which the applicant will receive all documents for the purpose of this application;
 - (c) the telephone and facsimile numbers of the applicant and the chief executive officer;
 - (d) a list which reflects the full names, addresses and telephone numbers of the shareholders exercising control, as contemplated in section 67 of the Act, over the company to be formed;
 - (e) a list which reflects the full names of the intended members of the controlling body of the company to be formed;
 - (f) a list which reflects the names, physical and postal addresses, telephone and facsimile numbers of—
 - (i) the bank;
 - (ii) the auditor; and
 - (iii) the attorney,of the company to be formed.
3. A statement explaining—
- (a) the reasons for the proposed demutualisation;
 - (b) the corporate governance principles that will be implemented; and
 - (c) whether or not it is intended to list the securities of the demutualised entity.
4. With regard to adequacy of management and human resources, an explanation of any expected changes to the—
- (a) senior management structure; and
 - (b) senior management and staff requirements for the period of the budgets referred to in paragraph 10, along with details.
5. A copy of the proposed amendments, which are related to the proposed demutualisation, of the—
- (a) rules of the applicant; and
 - (b) listing requirements of the applicant, where applicable.
6. Details of any change as a result of the proposed demutualisation in—
- (a) the specified functions that the applicant may provide in terms of its existing licence;
 - (b) any unregulated business carried on by the applicant; and
 - (c) any marginal business which may no longer be viable.
7. Details of the anticipated changes to the facilities which the applicant operates, including details of any expected changes to the trading platform, clearing and settlement functions and custody and administration functions supplied by the applicant.
8. Details of the persons who have or will provide corporate finance advice or similar services and the methodology relating to the valuation of the demutualised entity, including the proposed allocation of shares amongst the applicant's authorised users, participants or clearing members, as the case may be.
9. Details of the expected changes to—
- (a) information technology systems and arrangements for their supply, management, maintenance, upgrading and security;
 - (b) business continuity and disaster recovery plans in the event of disruption of the regulated business of the company to be formed;

- (c) internal control systems, risk management, insurance cover and compensation funds in respect of the regulated business of the applicant; and
 - (d) the process or system for the disclosure and efficient dissemination of price sensitive information.
10. In respect of the adequacy of financial resources—
- (a) the applicant must supply—
 - (i) a copy of its audited annual financial statements as at its latest financial year-end if it has been in existence for more than a year;
 - (ii) a copy of the budgeted income statement, balance sheet and cash flow statement for a three year period from the date of the latest annual financial statements;
 - (iii) a schedule illustrating the funding provisions for anticipated supervisory responsibilities over the budgetary period; and
 - (iv) a statement signed by the prospective chief executive officer of the company to be formed specifying the critical assumptions made in the preparation of budgets presented in terms of this application, in particular, the sources from which the company to be formed will derive its funding;
 - (b) if arrangements have been made for the funding of any expected shortfall in available cash resources, the applicant must provide a statement by the chief executive officer of the company to be formed setting out the expected means of remedying the expected shortfall.
11. The applicant must demonstrate that the fit and proper requirements prescribed by the registrar are met by the applicant, its directors and senior management.
12. The applicant must supply any other information, which the registrar may reasonably require, to assess this application properly.