

## BOARD NOTICE

### BOARD NOTICE 106 OF 2006

#### **PENSION FUNDS ACT, 1956, LONG-TERM INSURANCE ACT, 1998, SHORT-TERM INSURANCE ACT, 1998, SECURITIES SERVICES ACT, 2004 AND FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002**

#### **REQUIREMENTS IMPOSED BY THE FINANCIAL SERVICES BOARD FOR NOMINEES TO OPERATE IN SOUTH AFRICA**

1. I, Robert James Gourlay Barrow -

- (1) Registrar of Pension Funds;
- (2) Registrar of Long-term Insurance;
- (3) Registrar of Short-term Insurance;
- (4) Registrar of Securities Services;
- (5) Registrar of Financial Services Providers;

hereby publish for notification under -

- (a) section 5(3) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (b) section 34(1)(b) of the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
- (c) section 33(1)(b) of the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
- (d) section 36(2) of the Securities Services Act, 2004 (Act No. 36 of 2004);
- (e) Regulation 6(2) of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

the requirements imposed by the Financial Services Board for nominees to operate in South Africa as set for the in the schedule hereto.

2. This Notice comes into operation on date of publication.



**RJG BARROW**

## REQUIREMENTS IMPOSED BY THE FINANCIAL SERVICES BOARD FOR NOMINEES TO OPERATE IN SOUTH AFRICA

### 1. COMPLIANCE REQUIRED

1.1 Nominees, who want to register or hold any assets of long-term insurers, short-term insurers or pension funds, the nominee of an administrative and discretionary financial services provider, or any nominee that wants to hold securities in terms of Section 36(2) of the Securities Services Act, need prior written approval from the Registrar of Long-term Insurance, the Registrar of Short-term Insurance, Registrar of Pension Funds, Registrar of Financial Services Providers or the Registrar of Securities Services, as the case may be.

1.2 The requirements mentioned in 1.1 are not applicable to foreign nominees holding assets on behalf of long-term insurers, short-term insurers or pension funds.

1.3 Any of the abovementioned Nominees, who want to hold clients' securities in the STRATE environment, by appearing in a sub-register maintained by a Participant, must after the approval in terms of these requirements by the FSB, also comply with the criteria laid down by STRATE.

1.3.1 The criteria determined by STRATE is made in terms of Section 36 of the Securities Services Act (No 36 of 2004) (**"SSA"**) which provides that:

*" 36(1) A nominee of –*

- a) an authorised user must be approved by the exchange in terms of exchange rules;*
- b) a participant, or any other Nominee who has an account with the participant, must be approved by the central securities depository in terms of depository rules;*

*(2) A nominee that is not approved as a Nominee in terms of subsection (1) must be approved by the registrar and must comply with the requirements that the registrar may prescribe for Nominees before it can function as a Nominee in terms of this Act.*

*(3) The registrar must maintain a list of all Nominees approved in terms of exchange rules or depository rules."*

1.3.2 In terms of Section 36(1)(b) of the SSA, Nominees that want to hold clients' securities in the STRATE environment must comply with rule 6.6 of the STRATE Rules which provides that:

*“6.6A participant may only open a Securities Account in the name of a Nominee where:*

*6.6.1 the Nominee has been approved by an Exchange in terms of section 36(1)(a) of the Act;*

*6.6.2 the Nominee has been approved by the Registrar in terms of section 36(2) of the Act;*

*6.6.3 the Nominee is a foreign Nominee and has assured the Participant that it operates within its domestic legal framework with the appropriate regulatory approval required in its home jurisdiction; or*

*6.6.4 the Nominee has been approved by the CSD in accordance with the Act, Rules and Directives. “*

1.3.3 In terms of Rule 6.6.4 read with the directives, all Nominees must comply with Strate directives in terms of the Nominee policy.

1.4 Applicants referred to in clause 1.1 above, have to comply with the requirements as discussed below.

1.5 The Registrar concerned shall, for the purpose of this Notice, be; in the case of long-term insurers, the Registrar of Long-term Insurance; in the case of short-term insurers, the Registrar of Short-term Insurance; in the case of pension funds, the Registrar of Pension Funds; in the case of discretionary and administrative financial services providers, the Registrar of Financial Services Providers; and in the case of any other Nominee seeking approval in terms of Section 36(2) of the Securities Services Act, the Registrar of Securities Services.

## **2. AUTHORITY**

The authority of the Registrar concerned, to approve Nominees, is derived from the following legislation:

2.1 in the case of long-term insurers, section 34(1)(b) of the Long-term Insurance Act, 1998;

2.2 in the case of short-term insurers, section 33(1)(b) of the Short-term insurance Act, 1998;

2.3 in the case of pension funds, section 5(3) of the Pension Funds Act, 1956;

2.4 in the case of Administrative and Discretionary Financial Services Providers (FSP's) Regulation 6 (2) of the Regulations promulgated under the Financial Advisory and Intermediary Services Regulations, 2003 of the Financial Advisory and Intermediary Services Act, 37 of 2002; and

2.5 in the case of other Nominees, Section 36(2) of the SSA.

### 3. PRINCIPLES WHICH UNDERLIE THE MAINTENANCE OF REGISTERS OF OWNERSHIP OF SECURITIES

- 3.1 In terms of section 91A of the Companies Act, 1973 only a central securities depository, such as STRATE Ltd, may maintain a register of ownership of uncertificated securities and only Participants may maintain a sub-register of such ownership.
- 3.2 In terms of the Rules of STRATE, a Nominee may not appear in a sub-register maintained by a Participant unless the Nominee complies with the criteria determined by the Controlling Body.
- 3.3 The Nominee register (sub-sub register) is the sole record of beneficial ownership by persons reflected in the Nominee register, as a share certificate is no longer *prima facie* evidence of ownership in a STRATE eligible security in terms of section 91A of the Companies Act, 1973.
- 3.4 Nominees that wish to operate in the STRATE environment should refer to the STRATE Nominee Directive for guidance.

### 4. APPLICATION PROCEDURE

- 4.1 An application for approval as a Nominee shall be lodged with the Financial Services Board ("FSB"), PO Box 35655, Menlo Park, Pretoria, 0102 for the attention of the FAIS Department. The Nominee must clearly indicate whether it intends participating in the STRATE environment. If the Nominee is to hold assets on behalf of more than one of the afore-mentioned institutions, only one application needs to be lodged, although separate approvals in terms of the applicable legislation will be granted by the Registrar(s) concerned should the application be successful.
- 4.2 No application for approval of a Nominee needs to be lodged with the FSB, if the Nominee participates in the STRATE environment but will not hold assets on behalf of a pension fund, a long-term insurer or a short-term insurer, and a discretionary or administrative FSP's Nominee.
- 4.3 No application for approval of a Nominee needs to be lodged with the FSB if an entity is a subsidiary of an authorised user of the JSE Limited or a Participant of STRATE, as they will be approved by the JSE and STRATE, respectively.

### 5. REQUIREMENTS

#### 5.1 NOMINEES

In terms of the SSA, a Nominee means "a person that acts as the registered holder of securities or an interest in securities on behalf of other persons".

For the purposes of this document, a Nominee refers to any entity that holds assets in its own name on behalf of the beneficial owner (i.e. the nominee is not the

beneficial owner of these assets).

**A Nominee must -**

- 5.1.1 be a registered company under the Companies Act, 1973; and
- 5.1.2 be wholly owned by a holding company; and
- 5.1.3 have adequate insurance against loss through fire, theft and other disasters in place for trust assets held by the nominee as well as fidelity guarantee cover. (It is the responsibility of the holding company to put this in place); and
- 5.1.4 conclude a written agreement with each pension fund, short-term insurer and long-term insurer whose assets it will hold and the agreement should comply with the minimum requirements as required by the registrar concerned.

**5.2 HOLDING COMPANIES**

The Nominee may not have a natural person as a shareholder. The Nominee must be wholly owned by –

- 5.2..1 a long-term or short-term insurer as defined in section 1 of the Long-term Insurance Act, 1998 and section 1 of the Short-term Insurance Act, 1998 respectively; or
- 5.2..2 an authorised user in terms of the SSA; or
- 5.2..3 a bank or a bank controlling company as defined in section 1(1) of the Banks Act, 1990; or
- 5.2..4 a discretionary or administrative FSP as approved in terms of section 7 of the Financial Advisory and Intermediary Services Act, 37 of 2002; or
- 5.2..5 an administrator registered in terms of section 13B of the Pension Funds Act, 1956 where the exclusive object of its Nominee is the holding of pension fund assets; or
- 5.2..6 a participant of a Central Securities Depository licensed in terms of the Security Services Act, 36 of 2004.

**6 The holding company must, to the satisfaction of the Registrar concerned, demonstrate that it –**

- 6.1 Is fit and proper to own a Nominee for purposes of taking title of assets on behalf of long-term insurers, short-term insurers, pension funds or others and hold such assets in trust and in safe custody on their behalf; and

- 6.1.1.1 has a culture and operational structure which evidence a commitment to effective control by executive management and the board of directors over all aspects of the business of the Nominee and that demonstrates a zero tolerance to management override of controls; and
  - 6.1.1.2 has evidence of a commitment to the employment and retention of adequate numbers of suitably qualified personnel of integrity and the ongoing education of staff in relevant disciplines; and
  - 6.1.1.3 has evidence of a documented system of internal controls which ensures that its Nominee is effectively run, that the assets of clients are safeguarded and segregated and the records of the Nominee accurately reflect the information which they purport to present; and
  - 6.1.1.4 has evidence of appropriately documented procedures to exclude unauthorised access to critical systems, the thorough testing of all new proprietary systems and the continuity of operations of all critical applications of its Nominee, including disaster recovery and a business continuity plan; and
  - 6.1.1.5 has adequate and prospective financial resources represented by a minimum of R3 million equity capital which shall be maintained at all times; and
  - 6.1.1.6 has an appropriate documented system of risk management to provide substantial assurance of continuity of the business of its Nominee for the foreseeable future.
- 6.1.2 When the holding company has outsourced the control over the operation of the Nominee register to another company, that outsourced company must to the satisfaction of the Registrar, demonstrate that it has met the requirements in terms of clauses 5.2.2.1 to 5.2.2.7.
- 6.1.3 When the maintenance of the register has been outsourced, the Nominee has the obligation to advise the clients of the outsourcing arrangement.

## **6.2 DOCUMENTATION TO BE SUBMITTED**

An application for approval of a Nominee in terms of the applicable legislation administered by the FSB must be made in writing and shall include the following:

- 6.2.1 A copy of the Memorandum and Articles of Association of the Nominee which must contain the following provisions:
  - 6.2.1.1 A prohibition on the transfer of its issued shares to a natural person;
  - 6.2.1.2 A limitation on the transfer of its issued shares without the prior written consent of the Registrar;

- 6.2.1.3 The sole object being to conduct the business of a Nominee by taking title of assets on behalf of long-term insurers, short-term insurers, pension funds or other persons holding such assets in trust and in safe custody or electronically administer and maintain a Nominee register on their behalf, and otherwise only dealing with such assets as may be instructed by its clients;
- 6.2.1.4 A provision precluding the Nominee from acquiring any interest, for its own account, in any other company or from owning a subsidiary company;
- 6.2.1.5 A provision precluding the Nominee from incurring any liability, including contingent liabilities such as suretyship or indemnification, other than the liabilities it incurs to its clients in respect of assets held on their behalf and its ordinary obligations to its holding company; and
- 6.2.1.6 A limitation on the issuing of any unissued share capital, rights issue, issuing preference shares or debentures by the Nominee without the prior approval of the Registrar; and
- 6.2.2 A copy of the last audited financial statements of the Nominee, if it has already had a financial year end; and
- 6.2.3 A copy of the last audited financial statements of the holding company; and
- 6.2.4 A signed copy of the agreement between the holding company and the Nominee, in the prescribed format (refer **Annexure A**). Reasons must be provided for any deviation to the prescribed agreement.

### 6.3 CONTINUING OBLIGATIONS OF NOMINEES

- 6.3.1 The approved Nominee shall submit annually:
  - 6.3.1.1 its audited financial statements; and
  - 6.3.1.2 an audit report within six months of the financial year-end of the company to the FSB setting forth whether any assets held on behalf of any other person in safe custody, are in possession of the Nominee and properly accounted for.

Should the Nominee fail to submit the above and also not apply before the expiry of that period in writing for an extension of time within which to submit the statements, the FSB may withdraw its approval with immediate effect on the conditions as prescribed by the Registrar concerned.
- 6.3.2 A declaration by the holding company of the Nominee in the format as specified in clause 10 must accompany the annual financial statements of the Nominee

**6.3.3** The FSB will retain the right to withdraw an approval at any time should the Nominee, its holding company or the company to which the control over the Nominee register has been outsourced fail to comply with the FSB and STRATE requirements.

**6.3.4** Members of the JSE, Participants and their Nominees need only to comply with the requirements in terms of clause 5.4 if they hold securities on behalf of either pension funds or long and short-term insurers.

## **7 REGISTER OF APPROVED NOMINEES**

7.1 A register of all approved Nominees, specifying the categories of approval, will be maintained by the FSB. This register may be accessed on the FSB website at [www.fsb.co.za](http://www.fsb.co.za).

7.2 The JSE and STRATE must forthwith advise the FSB of any changes regarding Nominees approved by them.

## **8 PAYMENT OF FEES**

The holding company who applies for approval of a Nominee to hold assets on behalf of a long-term insurer, short-term insurer or pension fund, must pay the fees as prescribed in terms of the relevant legislation.

## **9 EFFECTIVE DATE OF REQUIREMENTS**

9.1 The requirements for the approval of a Nominee to operate in South Africa set out in this Notice shall apply to all new applications with immediate effect.

9.2 The requirements set out in this Notice replace the requirements in terms of which any Nominee was approved before 1 June 2001.

## **10 AMENDMENT OF REQUIREMENTS**

The Registrar concerned may change or amend the above requirements from time to time.



## 10. DECLARATION BY HOLDING COMPANY

<b>REPUBLIC OF SOUTH AFRICA</b> <b>DECLARATION BY A PERSON ACTING AS A DIRECTOR, MANAGING EXECUTIVE OR COMPLIANCE OFFICER OF A HOLDING COMPANY OF AN APPROVED NOMINEE</b>	
1. Holding Company	
2. Title and surname:	
3. Full name(s):	
4. Name of NOMINEE in connection with which this declaration form is submitted.	
5. Indicate the date on which approval was granted to the Nominee by the Financial Services Board.	Date of approval granted: _____
6. State in what capacity you are completing this form (eg. as a director, managing executive or compliance officer or a combination thereof, etc.), after being authorised by the Board of Directors of the holding company to sign this declaration.	
7. I, the undersigned, hereby certify that, to the best of my knowledge, the company still complies with "The requirements imposed by the FSB for Nominees to operate in SA .	
8. Material change(s) to information since the last date of submission is / are: (Indicate the effective date of the change).	
9. Attach a list of all pension funds, short-term insurers and long-term insurers whose assets are being held in terms of a written agreement referred to in clause 5.1.4.	
<div style="border-bottom: 1px solid black; width: 100%;"></div> Signature of Authorised Officer	<div style="border-bottom: 1px solid black; width: 100%;"></div> Date

**ANNEXURE A****MEMORANDUM OF AGREEMENT  
BETWEEN A HOLDING COMPANY AND A NOMINEE**

MEMORANDUM OF AGREEMENT made and entered into by and between

\_\_\_\_\_  
\_\_\_\_\_

(Name of Holding Company) of

\_\_\_\_\_

(Address of Holding Company)

(hereinafter referred to as the "Holding Company") represented herein by

\_\_\_\_\_  
\_\_\_\_\_

in his capacity as \_\_\_\_\_

\_\_\_\_\_

Duly authorised thereto by the Board of Directors at a meeting of the Board of Directors held  
on

\_\_\_\_\_

and

\_\_\_\_\_  
(Name of Nominee)

of \_\_\_\_\_

\_\_\_\_\_  
(Address of Nominee)

(hereinafter referred to as the "Nominee") represented herein by

\_\_\_\_\_  
\_\_\_\_\_

in his capacity as \_\_\_\_\_

Duly authorised thereto by the Board of Directors at a meeting of the Board of Directors held on \_\_\_\_\_

**WHEREAS:**

A. The Nominee has as its sole object the holding of assets on behalf of -

- registered long-term insurers as envisaged by section 34(1)(b) of the Long-term Insurance Act, 1998, to the extent authorised by the Registrar; and
- registered short-term insurers as envisaged by section 33(1)(b) of the Short-term Insurance Act, 1998, to the extent authorised by the Registrar; and
- registered pension funds as envisaged by section 5(3) of the Pension Funds Act, 1956, to the extent authorised by the Registrar; and
- other investors in terms of the Securities Services Act of 2004.
- Clients of administrative and discretionary financial services providers, as approved in terms of the Financial Advisory and Intermediary Services Act, 2002

B. The Holding Company has agreed to enter into an irrevocable agreement with the Nominee to enable the Nominee to attain its main objective.

**NOW THEREFORE THE HOLDING COMPANY AND THE NOMINEE AGREE AS FOLLOWS:**

**1 Definitions**

For the purpose of this Agreement, unless the context otherwise indicates –

- |     |             |   |
|-----|-------------|---|
| 1.1 | "bank"      | shall mean a public company registered provisionally or finally in terms of the Banks Act, 1990;  |
| 1.2 | "client"    | shall mean any person or body corporate who engages the services of the nominee and who transfers, whether directly or indirectly, any money, property or securities to the nominee;  |
| 1.3 | "liability" | shall include any obligation arising from an agreement to pay any money, perform any act, refrain from performing any act or endure any act, between the Nominee and a third party, and any conditional obligation, or deferred obligation but excludes any obligation arising from this Agreement and an obligation as would exist between a holding company and a subsidiary, as such, and also any obligation by the nominee to its clients in respect of any money, property or securities held by the nominee company on their behalf; |

- 1.4 "securities"
- (a) means:
    - (i) shares, stocks and depository receipts in public companies and other equivalent equities, other than shares in a share block company as defined in the Share Blocks Control Act, 1980 (Act No 59 of 1980);
    - (ii) notes;
    - (iii) derivative instruments;
    - (iv) bonds;
    - (v) debentures;
    - (vi) participatory interests in a collective investment scheme as defined in the Collective Investments Schemes Control Act, 2002 (Act No 45 of 2002), and units or any other form of participation in a foreign collective investment scheme approved by the Registrar of Collective Investment Schemes in terms of section 65 of that Act;
    - (vii) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country;
    - (viii) instruments based on an index;
    - (ix) the securities contemplated in subparagraphs (i) to (viii) that are listed on an external exchange; and
    - (x) an instrument similar to one or more of the securities contemplated in subparagraphs (i) to (ix) declared by the registrar by notice in the Gazette to be a security for the purposes of the SSA;
    - (xi) rights in the securities referred to in subparagraphs (i) to (x);
  - (b) excludes –
    - (i) money market instruments except for the purposes of Chapter IV of the SSA; and
      - (a) any security contemplated in paragraph (a) specified by the registrar by notice in the Gazette;
- 1.5 "security services"
- (ii) "security services" means services provided in terms of the SSA in respect of-
    - (a) the buying and selling of securities;
    - (b) the custody and administration of securities;
    - (c) the management of securities by an authorized user;
    - (d) the clearing of transactions in listed securities; and
    - (e) the settlement of transactions in listed securities
- 1.6 "money"
- shall mean all money accepted by the nominee company from clients and all money received by the nominee company on behalf of clients for the sole purpose of effecting instructions by clients with regard to the purchase and selling of its assets, for the collection of corporate event entitlements, dividends, interest and rents relating to the assets held on behalf of clients and for the payment of expenses in respect of the maintenance thereof;

- 1.7 "property" shall mean any property whether movable or immovable, real or intangible and includes any title deed, certificate or other document relating thereto;
- 1.8 "Registrar" shall mean the Registrar as defined in the Long-term Insurance Act, 1998 or the Registrar as defined in the Short-term Insurance Act, 1998, or the Registrar as defined in the Pension Funds Act, 1956, or the Registrar as defined in the Securities Services Act, 2004, or the Registrar as defined in the Financial Advisory and Intermediary Services Act, 2002, as the case may be.

## **2 Business of the Nominee**

The business of the Nominee shall be to take title of property, money or securities in trust for and on behalf of clients as Nominee for, or representative of, such clients, and to hold and otherwise deal with such property, money or securities strictly in accordance with any directions given by the respective clients from time to time to the Nominee.

## **3 Manner of dealing with assets of clients**

Subject to Clause 2, the Holding company and Nominee undertake to deal with the assets it hold on behalf of clients as follows:

### **3.1 Securities**

- 3.1.1 Securities as defined in the SSA shall be registered in the name of the Nominee.
- 3.1.2 Securities shall be stored and held in safe and secure custody or electronically administered and maintained and shall be protected by adequate and appropriate security and administrative systems.
- 3.1.3 The Nominee shall collect corporate action entitlements, dividends and interest relating to all securities held on behalf of clients, verify the calculations and timely payment thereof and convey all details of any options and rights issues to clients.
- 3.1.4 The Nominee will have no authority to exercise any voting rights attached to shares registered in the nominee company's name unless instructed to do so by its client.

### **3.2 Money**

- 3.2.1 The Nominee shall open a trust account or accounts for clients with one or more banks.
- 3.2.2 The Nominee shall forthwith deposit in the account or accounts opened in terms of clause 3.2.1 any money, which is accepted or received by it.
- 3.2.3 The Nominee shall deal with money so deposited in accordance with directions given to it by its clients from time to time.

### **3.3 Property**

- 3.3.1 Immovable property shall be registered in the name of the Nominee.
- 3.3.2 Immovable property shall be managed and secured in accordance with sound property management practices in relation to the particular property concerned, and shall be maintained in a like manner.
- 3.3.3 Movable property (for purposes of a long-term insurer, short-term insurer and pension fund) received and shall be dealt with as if it is the property of the Nominee and shall be kept in safe and secure custody and shall be properly maintained if necessary.
- 3.3.4 Any title deed, certificate or document pertaining to property shall be dealt with as if it were a marketable security.
- 3.3.5 The Nominee shall collect all rents relating to immovable property and pay all expenses incidental to the maintenance thereof as well as in respect of movable property held on behalf of clients, verify the calculations and timely payment thereof and convey all details of any options and rights issues to clients.

## **4 Records and accounting**

- 4.1 The Nominee shall keep and maintain proper books of account and other records necessary to identify each asset of each client and to discharge its obligations to its clients.
- 4.2 The Nominee shall forthwith provide a client with any information reasonably required by the client concerning assets held on his or its behalf.
- 4.3 The Nominee shall obtain the written authority of the client prior to receiving or holding any assets on behalf of such client.
- 4.4 The Nominee shall report regularly (in terms of the requirements of the relevant legislation) to its clients on assets held on their behalf and shall include all movements and changes in the holding concerned which occurred since the date on which the holding commenced or immediately prior to the report, as the case may be.

## **5 Liabilities**

The Nominee shall not out of its own volition incur any liability of whatsoever nature, but excluding liabilities arising from acts performed in carrying out its objectives as set out in its Memorandum and Articles of Association, or arising from this Agreement, or arising from its status as a subsidiary, as such, of the Holding Company.

## **6 Obligations of the Holding Company**

In consideration of the services to be undertaken from time to time by the Nominee, the Holding Company irrevocably undertakes and binds itself:

- 6.1 to pay all expenses of and incidental to the formation of the Nominee;
- 6.2 to pay the salaries of the secretary and staff of the Nominee and all directors' fees;
- 6.3 to provide, free of charge, the office accommodation, furniture, equipment and stationary necessary for the due carrying on of the business of the Nominee;
- 6.4 to pay all the other overhead, working and administrative expenses of the Nominee of whatsoever nature and kind, including any interest on bank overdrafts incurred on overnight clearance of cheques;
- 6.5 to pay any insurance premiums payable by the Nominee in respect of any policy of insurance effected by the Nominee;
- 6.6 to pay all the liquidation expenses of the Nominee of whatsoever nature and kind, in the event of the winding up of the Nominee;
- 6.7 to indemnify every director, managing director, agent, auditor, secretary and every officer for the time being of the Nominee out of the assets of the Holding Company against any liability incurred by any such person in defending any proceedings, whether civil or criminal, in which judgment is given in such person's favor, or in which he is acquitted, or in connection with any application under section 248 of the Companies Act, 1973 (Act No. 61 of 1973), in which relief is granted to him by any court;
- 6.8 not to dispose of the shares it holds in the Nominee to any person without the prior written approval of the Registrar concerned;
- 6.9 to indemnify every client of the Nominee against any loss sustained in consequence of a breach by the Nominee of its agreement with a client;
- 6.10 to guarantee the due performance of the obligations of the Nominee to its clients; and
- 6.11 to indemnify the Nominee against any liability incurred in respect of any act or omission by the Nominee's directors, employees, agents, servants or contractors.

## **7. Amendments to this Agreement**

This Agreement shall not be altered or amended without the prior written approval of the Registrar concerned.

**8. Cancellation or Termination**

- 8.1 This agreement is entered into on the basis that it is irrevocable and it is explicitly agreed that neither party shall have the right to cancel this agreement unilaterally or in consequence of a breach thereof by the other party.
- 8.2 Notwithstanding the provisions of 8.1 above, this agreement may be terminated if –
- 8.2.1 the Holding Company is provisionally or finally liquidated, or;
  - 8.2.2 the performance of the terms of this agreement become objectively impossible by reason of vis maior, legislative changes or any similar event, or;
  - 8.2.3 the Nominee has no further obligation of any nature to a client and such fact is certified by its Auditor and/or STRATE and/or the JSE, or;
  - 8.2.4 the Registrar concerned consents thereto on good cause shown by the parties jointly.
- 8.3 The Holding Company and the Nominee shall, if this agreement is terminated by joint action, or where one of them gives written notice of intention to terminate to the other both shall forthwith advise the Registrar concerned thereof in writing, and provide him with reasons therefor.

**9. Cession**

The Nominee undertakes not to cede any of its rights under this agreement to anyone.

**10. Utmost Good faith**

The Nominee and Holding Company shall at all times act and display towards its clients the utmost good faith as between principal and agent in all its actions and disclosures concerning the assets it holds for and on behalf of its clients.

**11. Commencement**

This Agreement shall commence on \_\_\_\_\_

**12. costs**

The costs of this Agreement shall be borne by the Holding Company.



THUS DONE AND SIGNED AT \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
(Insert name of Holding Company)

\_\_\_\_\_  
DIRECTOR

AS / NESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

THUS DONE AND SIGNED AT \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
(Insert name of Nominee)

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
1.

2. \_\_\_\_\_

2. \_\_\_\_\_

Ref: Apply – SA Nominee

## FINANCIAL SERVICES BOARD

### REPUBLIC OF SOUTH AFRICA



#### REQUIREMENTS IMPOSED BY THE FINANCIAL SERVICES BOARD FOR NOMINEES TO OPERATE IN SOUTH AFRICA

APPLICATION FOR APPROVAL TO ALLOW THE HOLDING OF ASSETS BY A SOUTH AFRICAN NOMINEE ON BEHALF OF A LONG-TERM INSURER, SHORT-TERM INSURER OR PENSION FUND IN TERMS OF SECTION 34(1)(b) OF THE LONG-TERM INSURANCE ACT, SECTION 33(1)(b) OF THE SHORT-TERM INSURANCE ACT OR SECTION 5(3) OF THE PENSION FUNDS ACT, SECTION 7 OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, SECTION 36(2) OF THE SECURITIES SERVICES ACT (“ACTS”) AND APPROVAL TO HOLD UNCERTIFICATED SECURITIES ACCOUNTS IN THE STRATE ENVIRONMENT

#### A. Instructions for completion and submission

1. For all definitions please refer to the Requirements imposed by the Financial Services Board for Nominees to operate in South Africa. The said document must be used in conjunction with this application form.
2. This form must be properly completed and signed. Questions must be answered either in full or not applicable (“n/a”). Any signatories must be duly authorised to make the application.
3. The format of this form or the wording of questions may not be changed. However, this form may be reproduced.
4. Answers may be in writing or may be typed.
  - 4.1 If the form is completed on a computer, -
    - (a) delete the solid lines in those areas provided for answers before the answers are typed or use the overtype mode whilst the answers are typed.
    - (b) rows may be inserted where insufficient space is provided for answers.

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- 4.2 If the form is completed by hand, (should the space provided not be sufficient the detail can be provided on a separate page), duly cross-referenced to the relevant question.
- 4.3 If the form that is submitted contains any changes to typed or written information, those changes must be signed.
5. The application should be submitted in advance to ensure that there is sufficient time to allow the Registrar to consider it and seek information or clarification, where necessary,

**B. General information**

1. This form is required in terms of section 34(1)(b) of the Long-term Insurance Act, section 33(1)(b) of the Short-term Insurance Act, section 5(3) of the Pension Funds Act and Regulation 6(2) of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, 2002, and Section 36(2) of the Securities Services Act, 2004 ("SSA").
2. This form must be accompanied by the prescribed fees (refer to 7.1) as well as all the documentation requested in the requirements (refer 7.2).
3. The application will not be considered favourably if it is not supported by a compelling reason(s).

**C. Legal and policy framework**

1. In terms of section 34(1)(b) of the Long-term Insurance Act, section 33(1)(b) of the Short-term Insurance Act, section 5(3) of the Pension Funds Act or Section 7 of the Financial Advisory and Intermediary Services Act, 2002 and Section 36(2) of the Securities Services Act, 2004, an insurer, pension fund or financial services provider shall not allow its assets to be held by another person on its behalf, without the approval of the Registrar, given generally or in a particular case, and subject to such conditions as the Registrar may determine.

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2. Nominees approved in terms of the Acts, which want to hold clients' securities in the STRATE environment, by appearing in a sub-register maintained by a Participant, must comply with the criteria determined by STRATE.
3. A separate guideline for the requirements that are imposed by the Financial Services Board for Nominees to operate in South Africa in terms of section 34(1)(b) of the Long-term Insurance Act, section 33(1)(b) of the Short-term Insurance Act, section 5(3) of the Pension Funds Act, Section 36(2) of the Securities Services Act, 2004, or Section 7 of the Financial Advisory and Intermediary Services Act, 2002 sets out the policy framework ("requirements").

D. Specific information

I, the undersigned, being a/the \_\_\_\_\_<sup>1</sup>  
of \_\_\_\_\_  
hereby apply for approval to allow the holding of assets by a South African Nominee in terms of the requirements.

<sup>1</sup> Insert title, and indicate whether you have the authority

The following information is provided in support of the application.

1. Request approval for the following:

To hold assets on behalf of:

- 1.1 Long-term Insurer
- 1.2 Short-term Insurer
- 1.3 Pension Fund
- 1.4 Clients of administrative and/or discretionary Financial Services Providers
- 1.5 To operate in the STRATE environment as a custodian of securities
- 1.6 Other investors in terms of Section 36(2) of the Securities

YES	NO

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Services Act

2. Nominee.

2.1 State the name of the South African Nominee.

2.2 Confirm that the Nominee -

2.2.1 is a registered company under the Companies Act, 1973; and

2.2.2 is wholly owned by a holding company; and

2.2.3 has adequate insurance against loss through fire, theft and other disasters in place for trust assets held by the Nominee as well as fidelity guarantee cover; and

2.2.4 concluded, or will conclude, a written agreement with each pension fund, short-term insurer and long-term insurer whose assets it will hold and the agreement should comply with the minimum requirements as required by the Registrar concerned.

YES	NO <sup>2</sup>

<sup>2</sup> If **the** answer is "No" kindly *explain*.

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3. Holding company.

3.1 Confirm that the Nominee -

- (a) does not have a natural person as a shareholder.
- (b) is wholly owned by -
- (i) a long-term or short-term insurer as defined in section 1 of the Long-term Insurance Act, 1998 and section 1 of the Short-term Insurance Act, 1998, respectively;
  - (ii) an authorised user as defined in section 1 of the Securities Services Act;
  - (iii) a financial services provider authorised in terms of the Financial Advisory and Intermediary Services Act, 2002.;
  - (v) an administrator registered in terms of section 13B of the Pension Funds Act, 1956 where the exclusive object of its Nominee is the holding of pension fund assets;
  - (vi) a participant of a Central Securities Depository licensed in terms of the Securities Services Act, 36 of 2004.

YES	NO <sup>3</sup>

<sup>3</sup>. If the answer is "No" kindly explain.

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3.2 State the -

(a) name of the holding company in Part D question 3

\_\_\_\_\_

(b) name of the ultimate holding company, if any

\_\_\_\_\_

(c) name and position of the contact person

\_\_\_\_\_

(d) physical address of the holding company

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(e) postal address of the holding company

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(9)** telephone number of the contact person of the Nominee and its holding company

\_\_\_\_\_

(g) facsimile number of the contact person of the Nominee and its holding company.

\_\_\_\_\_

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(h) e-mail address of the contact person of the Nominee and its holding company

(i) year-end of the holding company

(j) year-end of Nominee

**3.3** Did the holding company outsource the control **over** the operation of the Nominee register to another company?

(a) If the answer is "yes", supply us with the following:

Details of the outsourced company:

Name: \_\_\_\_\_

Contact person: \_\_\_\_\_

Contact details: \_\_\_\_\_

Is the outsourcing company one of the following:

- a long-term or short-term insurer as defined in section 1 of the Long-term Insurance Act, 1998 and section 1 of the Short-term Insurance Act, 1998 respectively; or
- an authorised user in terms of the SSA; or

Yes	No



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- a bank or a bank controlling company as defined in section 1 (b) of the Banks Act, 1990; or
- a discretionary or administrative financial services provider ("FSP") as approved in terms of section 7 of the Financial Advisory and Intermediary Services Act, 37 of 2002; or
- an administrator registered in terms of section 13B of the Pension Funds Act, 1956 where the exclusive object of its Nominee is the holding of pension fund asset; or
- a participant of a Central Securities Depository licensed in terms of the Securities Services Act, 36 of 2004.


Attach evidence that the outsourcing company comply with the requirements 5.2.2.1 to 5.2.2.7 as set out in the Requirements imposed by the FSB for Nominees to operate in South Africa.

A copy of the subordination agreement must be attached to this application form.

(b) If the answer is "no", supply us with the following:

- (i) A document setting out the organisational structure of the Nominee's holding company or division thereof responsible for the operations of the Nominee;
- (ii) A list of the names of the directors of the Nominee's holding company, identifying executive and non-executive directors;
- (iii) The composition of the audit committee at the Nominee's holding company; and
- (iv) A list of personnel of the Nominee's holding company responsible for the operation of the Nominee, including their designated functions, experience and qualifications.

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3.4 Confirm the following regarding the holding company:

1. Does the holding company have an internal audit function?
2. Does the audit committee consider the internal control reports of the internal and external auditors on the systems of the Nominee's holding company that are applicable to the operation of the Nominee?
3. Is there a code of ethics, approved by the board of directors, at the Nominee's holding company?
4. Does the holding company have accounting controls and procedures manual, to operate a nominee? This manual should cover the controls and procedures implemented by the holding company or a division thereof, to operate a Nominee.
5. Is there a compliance officer appointed at the holding company?
6. Is the compliance officer aware of the continuing obligations in respect of the Nominee?
7. Is there a risk management process or a documented system of risk management at the holding company?

YES	NO <sup>4</sup>

<sup>4</sup> If the answer is "No" kindly explain.

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**4. Documentation submitted –**

**4.1** a copy of the Memorandum and Articles of Association of the Nominee and confirm that the following provisions are included:

- (a) A prohibition on the transfer of its issued shares to a natural person;
- (b) A limitation on the transfer of its issued shares without the prior written consent of the Registrar(s) concerned;
- (c) The sole object being to conduct the business of a Nominee by taking title of assets on behalf of long-term insurers, short-term insurers, pension funds or other persons holding such assets in trust and in safe custody or electronically administer and maintain a Nominee register on their behalf, and otherwise only dealing with such assets as may be instructed by its clients;
- (d) A provision precluding the Nominee from acquiring any interest, for its own account, in any other company or from owning a subsidiary company;
- (e) A provision precluding the Nominee from incurring any liability, including contingent liabilities such as suretyship or indemnification, other than the liabilities it incurs to its clients in respect of assets held on their behalf and its ordinary obligations to its holding company;
- (f) A limitation on the issuing of any unissued share capital, rights issue, issuing preference shares or debentures by the Nominee without the prior approval of the Registrar(s) concerned;

YES	NO <sup>5</sup>

<sup>5</sup> If the answer is "No" kindly explain.

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- 4.2** a copy of the latest audited financial statements of the Nominee, if it has already had a financial year-end;
- 4.3** a copy of the last audited financial statements of the holding company;
- 4.4** a signed copy of the agreement between the holding company and the Nominee, in the prescribed format (refer Annexure A in Part D of the Guideline for the requirements that are imposed by the Financial Services Board for Nominees to operate in South Africa). Reasons must be provided for any deviation to the prescribed agreement;
- 4.5** where the Nominee outsources the control of its Nominee register, a signed copy of the administration and service level agreement between the Nominee, its holding company and the company providing the outsourced services. Does the agreement contain all the following provisions:
- (a) Details of the responsibilities of each party involved;
- (b) A provision which states that the contract shall only be valid whilst the company providing the outsourced services is approved by the FSB, JSE or STRATE;
- (c) A provision precluding the change or cancellation of the above agreement before informing the FSB and JSE or STRATE, where applicable;
- (d) A provision that the company providing the outsource services must submit the audit report as


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specified in clause 5.4.1(b) of the requirements to  
the Nominee;

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5. Did the insurer inform its auditor(s) and statutory actuary  
(where one is appointed) of this application\*?

YES	NO <sup>6</sup>

<sup>6</sup> If the answer is "No" kindly explain.

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*\*Leave blank if the application is not made by an insurer.*

6. Are there any other information or documents that are  
relevant to this application?

YES <sup>7</sup>	NO

<sup>7</sup> If the answer is "Yes" kindly specify the information or documents.

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7 I hereby enclose (indicate with a X) -

7.1 the payment or proof of payment of  
the prescribed fee of:

R 5 235 for the approval to hold  
long-term insurance assets;

R 5 235 for the approval to hold  
short-term insurance assets;

R 3 800.00 for the approval to hold  
pension fund assets;

R 4 385.00 for discretionary and  
administrative financial services  
providers; and

R3 000 for approval of a Nominee  
in terms of the **SSA**

7.2 the documentation in question 4 of  
Part D.

7.3 the other documents, if any,  
mentioned in the Part D of this form  
in support of the application.


8. The holding company of the Nominee must, to the satisfaction of the Registrar concerned, demonstrate that it complies with the following requirements set out in clause 5.2.2 of the requirements imposed.

I hereby certify that the holding company:

- (a) is fit and proper to own a Nominee for purposes of taking title of assets on behalf of long-term insurers, short-term insurers, pension funds or others and hold such assets in trust and in safe custody on their behalf;
- (b) has a culture and operational structure which evidence a commitment to effective control by executive management and the board of directors over

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all aspects of the business of the Nominee and that demonstrates a zero tolerance to management override of controls;

- (c) has evidence of a commitment to the employment and retention of adequate numbers of suitably qualified personnel of integrity and the ongoing education of staff in relevant disciplines;
- (d) has evidence of a documented system of internal controls which ensures that its Nominee is effectively run, that the assets of clients are safeguarded and segregated and the records of the Nominee accurately reflect the information which they purport to present;
- (e) has evidence of appropriately documented procedures to exclude unauthorised access to critical systems, the thorough testing of all new proprietary systems and the continuity of operations of all critical applications of its Nominee;
- (f) has adequate and prospective financial resources represented by a minimum of R3 million equity capital which shall be maintained at all times; and
- (g) **has** an appropriate documented system of risk management to provide substantial assurance of continuity of the business of its Nominee for the foreseeable future.



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I certify, to the best of my knowledge, that the information given in the answers to the above questions are complete, accurate and true and not misleading in any respect.

Full forename(s), surname and capacity of the authorised person.

\_\_\_\_\_  
**SIGNATURE OF AUTHORISED PERSON**

\_\_\_\_\_  
**DATE**