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GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. 898

11 October 2010

DETERMINATION OF THRESHOLD IN TERMS OF THE CONSUMER PROTECTION ACT, 2008 (ACT NO. 68 OF 2008)

In terms of section 6 (1) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) ("the Act"), the Minister of the Department of Trade and Industry, by notice in the Gazette, must determine a monetary threshold applicable to the size of the juristic person for the purposes of the section 5(2) (b). In terms of section 5(2)(b) thereof, the Act does not apply to any transaction in terms of which the consumer is a juristic person whose asset value or annual turnover, at the time of the transaction equals or exceeds the threshold value determined by the Minister in terms of section 6.

I, Dr Rob Davies, Minister of Trade and Industry, do hereby determine in terms of section 6 (1) of the Consumer Protection Act, 2008 (Act 68 of 2008) that the monetary threshold applicable to the size of the juristic person in terms of section 5 (2) (b) is R3 Million. The afore-mentioned monetary threshold must be calculated in accordance with the attached schedule.

Interested persons are invited to submit written comments regarding the proposed determination by 31 October 2010 to cparegs@thedti.gov.za or Fax (012) 394 2383. For more information please contact Mr. Ntutuzelo Vananda at 012 394 1383.

Dr. Rob Davies, MP
Minister of Trade and Industry
The Department of Trade and Industry
Private Bag X84
Pretoria
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SCHEDULE

Method of Calculation

1. International Financial Reporting Standards apply

For the purposes of section 6 of the Act, the assets, and the turnover, of a juristic person contemplated in regulation 2(1), must be calculated in accordance with International Financial Reporting Standards ("I.F.R.S."), subject only to items 2, 3 and 4 of this notice.

2. Valuation of Assets

- (1) For the purpose of section 6 of the Act, the asset value of a juristic person at any time is based on the gross value of the juristic person's assets as recorded on the juristic person's balance sheet for the end of the immediately previous financial year, subject to the provisions of sub-items 2.2 and 2.3.
- (2) In particular—
 - (a) the asset value equals the total assets less any amount shown on that balance sheet for depreciation or diminution of value;
 - (b) the assets are to include all assets on the balance sheets of the juristic person, including any goodwill or intangible assets included in their balance sheets;
 - (c) no deduction may be taken for liabilities or encumbrances of the juristic person;
 - (d) assets in the Republic includes all assets arising from activities in the Republic.
- (3) If, between the date of the financial statements being used to calculate the asset value of a juristic person, and the date on which that calculation is being made, the juristic person has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements—

- (a) The following items must be added to the calculation of the juristic person's asset value if these items should in terms of I.F.R.S. be included in the juristic person's asset value:
 - (i) the value of those recently acquired assets; and
 - (ii) any asset received in exchange for those recently divested assets.
- (b) The following items may be deducted in calculating the juristic person's asset value if these items were included in the juristic person's asset value:
 - (i) The value of those recently divested assets at the date of their divestiture; and
 - (ii) Any asset that was shown on the balance sheet and was subsequently used to acquire the recently acquired asset.

3. Calculation of annual turnover

- (1) For the purpose of section 6 of the Act, the annual turnover of a juristic person at any time is the gross revenue of that juristic person from income in, into or from the Republic, arising from the following transactions and events as recorded on the juristic person's income statement for the immediately previous financial year, subject to the provisions of sub-items (2), (3) and (4):
 - (a) the sale of goods;
 - (b) the rendering of services; and
 - (c) the use by others of the juristic person's assets yielding interest, royalties and dividends.
- (2) In particular—
 - (a) When calculating turnover the following amounts may be excluded:
 - (i) any amount that is properly excluded from gross revenue in accordance with I.F.R.S.;
 - (ii) taxes, rebates, or any similar amount calculated and paid in direct relation to revenue, as for example, sales tax, value added tax, excise duties, and sales rebates, may be deducted from gross revenue;
 - (b) revenue excludes gains arising from noncurrent assets and from foreign currency transactions; and

- (c) for banks and insurance juristic person revenue includes those amounts of income required to be included in an income statement in terms of generally accepted accounting practice, but excluding those amounts noted in 3 (2) (b).
- (3) If, between the date of the most recent financial statements being used to calculate the turnover of a juristic person, and the date on which that calculation is being made, the juristic person has acquired any subsidiary company, associated company or joint venture not shown on those financial statements, or divested itself of any subsidiary company, associated company or joint venture shown on those financial statements —
- (a) the turnover generated by those recently acquired assets must be included in the calculation of the juristic person's turnover if this turnover should in terms of I.F.R.S. be included in the turnover of the juristic person; and
 - (b) the turnover generated by those recently divested assets in the immediately previous financial year may be deducted from the juristic person's turnover if this turnover was included in the turnover of the juristic person.
- (4) If the financial statements used as a basis for calculating turnover or the turnover included in terms of paragraph (a) of sub-item 3.3 are for more or less than 12 (twelve) months, the values recorded on those statements must be pro-rated to the equivalent of twelve months.

4. Form of financial statements

Financial statements used as a basis for calculating assets or turnover of a juristic person—

- (a) must be the juristic person's audited financial statements, if,—
 - (i) in terms of any law, the juristic person is required to produce such statements; or
 - (ii) the juristic person has audited statements for the relevant period; and
 - (b) otherwise, must be prepared in accordance with I.F.R.S.
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