



Takeover  
Regulation  
Panel

a member of the dtic group

# Takeover Regulation Panel

## 2024/25 Annual Performance Plan

### Presentation to the Portfolio Committee on Trade, Industry and Competition

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the dtic

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

# TABLE OF CONTENTS



	Page
1. Who We Are	4
2. Mandate of the Panel	5
3. Governance Structure	6
4. Human Capital & Skills Development	10
5. Functions of the Panel	11
6. Department Oversight	13
7. Strategic Focus	14

# TABLE OF CONTENTS CONT



## Page

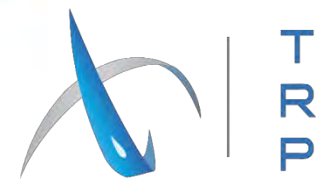
- 8. Development Objectives & KPI's
- 9. Financial Management
- 10. Research capability of selected entities

16

21

23

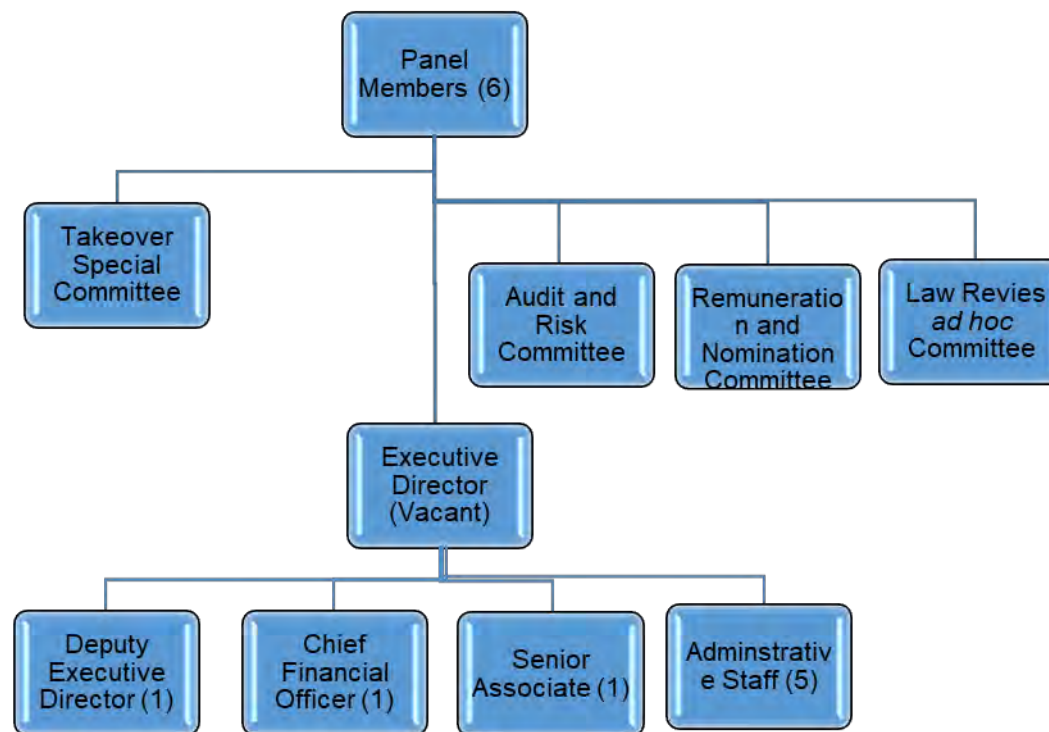
# WHO WE ARE



- The **Panel** is established in terms of **section 196(1) of the Companies Act, 2008 (the Act)** as an organ of state within public administration and outside the public service.
- Has **jurisdiction** throughout the **Republic**.
- Is **independent** subject to
  - ❖ The constitution and the law; and
  - ❖ Any policy statement, directive and request issued to it by the **Minister of the Department of Trade Industry & Competition (the Minister)** of in terms of the **Act**.
- Must be **impartial** and act without fear or favour.
- Must **perform its functions cost-effectively** and in line with the values in section 195 of the constitution.

- WHAT IS THE SATUTORY MANDATE OF OUR REGULATION OF TAKEOVERS?
- Ensure the **integrity of the marketplace** and fairness to the holders of the securities of regulated companies.
- Ensure the **provision of necessary information to holders of securities** of regulated companies to facilitate fair and informed decisions and provide adequate time for regulated companies and holders of their securities to obtain and provide advice concerning offers.
- **Prevent actions** by a regulated company designed to **impede, frustrate, or defeat an offer** or the making of fair and informed decisions by the holders of that company's securities.

In executing the Panel's legislative mandate, the Panel's structure is tabled below.



## THE PANEL

- The **Panel** is constituted in terms of **section 197** of the Act and can have **up to 15 Panel Members**.
- The **Panel** currently has **6 Panel Members** including the **Chairperson** appointed by the **Minister** in terms of **section 198** of the Act.
- 2 ex officio Panel Members **CPIC Commissioner** & **Competition Commissioner** or delegates.
- **2 representatives** of the active **exchanges** in RSA namely **JSE** and **CTSE**.
- **2 Panel Members appointed by the Minister** in terms of section 196(1)(d) appointed by the Minister, including the **Chairperson**.

## THE TAKEOVER SPECIAL COMMITTEE (TSC)

- The TSC is the appeal body of the Panel.
- The TSC sits on an adhoc basis.

## THE TAKEOVER SPECIAL COMMITTEE (TSC)

- The **TSC** is constituted in terms of **section 202** of the Act.
- The TSC is currently **not constituted** as the Minister **needs** to appoint **additional members** to the Panel in terms of section 197(1)(d).
- Only **Panel Members appointed** in terms of section 197(1)(d) can **sit on** the **TSC**.
- The **TSC** needs a **minimum** of **three Panel Members** appointed in terms of section **197(1)(d)** to be quorate.

## THE LAW REVIEW COMMITTEE

- This is an **ad hoc** committee.
- The committee **sets policy** in terms of interpretation of **Takeover Provisions** for the Panel.



## THE AUDIT & RISK COMMITTEE (ARC)

- The **ARC** is responsible *inter alia* review of how management addresses risk.
- The **external** and **internal auditors** report to ARC.

## THE REMUNERATION & NOMINATION COMMITTEE (REM NOM)

- **REM NOM monitors** the Panel's **human resource** function.

## HUMAN CAPITAL

- The **TRP** has 8 employees.
- **62,5%** of the staff complement is **female**, **100%** is **black**, **25% is youth**.
- The **Executive Director** role is **vacant** the **Panel** is working to **fill** this vacancy **as soon as possible**.

## SKILLS DEVELOPMENT

- The Panel runs an **internship program** and **secondment program**.
- The **internship program** employs **young graduates** that have never been employed.
- The **secondment program** has a **gender lens** and seeks to expose professional **females** in the Mergers & Acquisition industry to regulation of Offers.

# FUNCTIONS OF THE PANEL



- The Panel regulates mergers, takeovers and offers defined as **Affected Transactions** in terms of Section 117(1)(c) of the **Act**.
- Further for the Panel's jurisdiction to be triggered a **Regulated Company** as defined in Section 118(1) if the Act must partake in an Affected Transaction.
- Regulated Companies include:
  - ❖ Public Companies (both listed and unlisted).
  - ❖ State-owned companies.
  - ❖ Certain private companies
- In terms of **Section 169** of the Act the Panel's functions include the **initiation of investigations** upon receipt of complaints or direction from the Minister.
- The **Panel** only investigates complaints that in the event the complaints were found to be **true would result in non-compliance** of the Takeover Provisions.

# FUNCTIONS OF THE PANEL CONT.



*Failure to comply with a compliance notice issued may result in a regulated company being fined up to 10% of annual turnover by a Court on application by the Panel or may constitute a criminal offence and a person may be prosecuted; and on conviction may lead to imprisonment for a period of 12 months. Other offences include providing false information, improperly influencing the Panel or anticipating the findings of the Panel.*

## What is a Takeover/Offer?

- A **Takeover** involves acquiring a majority stake in a company's shares or other vital assets
- Key elements of a **Takeover** include:
  - ❖ **Acquisition of control**: The main objective is to gain control over the target company's decision-making processes.
  - ❖ **Purchase of shares**: This is the most common method of acquiring control.
  - ❖ **Bidder and target**: The two parties involved in the takeover process.



- The **dtic host quarterly forums** for regulators wherein the **TRP reports** on operations, risks, market activity etc.
- In accordance with the **PFMA** the **Panel submits quarterly** reports to the dtic.
- In terms of **sections 197(1)(d) & 198** of the Act the **Minister** appoints **Panel Members** and the **Chairperson** of the Panel.
- In terms of **section 200(4)** the **Chairperson** of the Panel in **consultation** with the **Minister** the **terms** and **conditions** of the **employment** of the **Executive Director**.

# STRATEGIC FOCUS



## 1. Vision

To be a **world-class regulator** in the takeover environment.

## 2. Mission

To be a highly regarded regulator that is **sustainable**, founded on the **excellence** of its people and their **responsiveness** to stakeholders.

## 3. Values

3.1. We are an **impartial** and **efficient** regulatory agency built on **integrity**.

3.2. The constituent parts of this value statement are understood as follows:

**3.2.1. Impartial** - Being **independent** without fear or favour.

**3.2.2. Efficient** - Displaying **competence** by being **accessible**, **responsive**, reliable and cost-effective.

**3.2.3 Integrity** - Being **honest**, building trust, ensuring **confidentiality**, not being influenced and showing **respect** by displaying **professionalism**.

# DEVELOPMENTAL OBJECTIVES & KPI's



Outcome	Alignment to the dtic outputs	Outputs	Output indicators	Annual Targets						
				Audited actual/performance			Estimated performance	MTEF Period		
				2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Improved efficiency	Output 40	Decisions and rulings in relation to affected transactions <sup>1</sup> issued within 5 working days from receipt of complete application	Percentage of decisions and rulings issued <sup>2</sup> within 5 working days.	100%	100%	100%	100%	100%	100%	100%

<sup>1</sup> Affected transactions are defined in Section 117(1)(c) of the Act and encompass all transactions which trigger the jurisdiction of the Panel in terms of the Act and the Regulations.

<sup>2</sup> Rulings issued are as prescribed by Regulation 81(y) of the Regulations. Issued means written communication to the client or their representative on letterhead or email. The turnaround process involves (i) acknowledging receipt of the relevant process (application or document) on the date of receipt by e-mail and allocating to one of the staff members of the Panel, (ii) considering the process and (if it is an announcement, vetting and providing comments, if any, and approving it by email) OR (if it is one of the formal documents (i.e. Firm Intention Announcement (FIA) or Circular, vetting and providing comments, if any. For FIAs, ensuring that a satisfactory cash confirmation in terms of Regulation 111(4) and (5) has been delivered. For Circulars, invoicing the transaction and receiving payment before approving (on letterhead) the publication thereof. Each review is finalized within 5 days of receipt) OR (for applications, considering these and providing comments, if any. Thereafter, invoicing is dependent on the type of application made. The final ruling will be delivered once the invoice is settled.



# DEVELOPMENTAL OBJECTIVES &KPIs



Outcome	Alignment to the dtic outputs	Outputs	Output indicators	Annual Targets						
				<i>Audited actual/performance</i>			<i>Estimated performance</i>	<i>MTEF Period</i>		
				2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Improved efficiency	Output 40	Investigation completed within 1 month for simple investigations and 4-months for complex matters, subject to extension at the discretion of the Executive Director.	Percentage of matters where the person undertaking the investigation, depending on the complexity of the subject matter of the investigation, issues their report in terms of section 170 within (i) 1 month for simple investigations, and (ii) 4 months for complex investigations, subject to the discretion of the Executive Director whether the investigation period ought to be extended or not.	100%	100%	100%	100%	100%	100%	100%

# DEVELOPMENTAL OBJECTIVES & KPIs



Outcome	Alignme nt to dtic outputs	Outputs	Output indicators	Audited Actual performance			Estimated performanc e	Medium term targets		
				2020/21	2021/22	2022/23		2024/25	2025/26	2026/27
Transform ation to build an inclusive economy.	Output 13	Staff retention	Percentage of staff retained	100%	100%	100%	100%	85%	85%	85%
Transform ation to build an inclusive economy.	Output 33	Number of seminars/ lectures/	Improved stakeholder engagement s	-	-	-	4	Conduct a guest lecture on takeover law to Master's students at University of the Johannesb urg	Conduct a guest lecture on takeover law to Master's students at the University of Johannesburg	Conduct a guest lecture on takeover law to Master' s student s at the University of Johannesburg
Transform ation to build an inclusive economy.	Output 37	Engagement with International Peer regulators	Maintain global best practices, by sharing information and ideas.		-	-	3	Participate in the Internationa l Takeovers Regulators' Forum	Participate in the International Takeovers Regulators' Forum	Participate in the International Takeovers Regulators' Forum

# DEVELOPMENTAL OBJECTIVES & KPI's



Outcome	Alignme nt to dtic outputs	Outputs	Output indicators	Audited Actual performance			Estimated performanc e	Medium term targets	
				2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
Promoting a growing and inclusive economy	Output 8	1.5  Procurement to promote transformation and empowerment of designated groups		-	-	-	-	60% of procurement awarded to service providers with Level 4 and above B-BBEE accreditation	65% of procurement awarded to service providers with Level 4 and above B-BBEE accreditation

In line with the overarching outcomes of the dtic (Industrialization, Transformation and Capable State).

# DEVELOPMENTAL OBJECTIVES & KPI's



Outcome	Alignme nt to dtic outputs	Outputs	Output indicators	Audited Actual performance			Estimated performanc e	Medium term targets		
				2020/21	2021/22	2022/23		2023/24	2024/25	2025/26
Functional , efficient and integrated services within the Panel to improve economic developm ent and ease of doing business	Output 40	Functional, efficient and user-friendly electronic Document Management System to assist in ease of doing business	The Panel uses a cloud-based Document Management System to manage matters (both transaction and administratio n related). This ensures that the production records of decisions are easily reconciled and produced should the need arise.	N/A	N/A	N/A	N/A  New Indicator	100%	100%	100%

In line with the overarching outcomes of the dtic

	APPROVED BUDGET 2023/24	BUDGET ESTIMATES 2024/25	BUDGET ESTIMATES 2025/26	BUDGET ESTIMATES 2026/27
<b>REVENUE</b>				
	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>
Documentation Fees	6 006	6 294	6 590	6 893
Rulings and Consultations	837	876	918	961
Surcharge Fees	21 298	18 711	19 590	20 491
Hearings Income	450	565	565	565
Interests from Investments	5 668	7 422	7 554	7 686
<b>TOTAL INCOME</b>	<b>34 259</b>	<b>33 868</b>	<b>35 217</b>	<b>36 596</b>
<b>EXPENDITURE</b>				
Administrative Fees	4 047	3 918	4 094	4 349
Audit Costs	332	461	483	505
Conferences	637	668	699	731
Consultants Fees	211	321	336	351
Legal Services	3 006	4 510	4 961	5 457
Panel Members Fees	1 844	2 887	2 902	2 917
Salaries And Wages	22 248	19 583	20 504	21 447
<b>TOTAL EXPENDITURE</b>	<b>32 325</b>	<b>32 348</b>	<b>33 979</b>	<b>35 757</b>

- The **Act empowers** the Panel **to fund** its operations.
- The Act permits the panel to **levy fees** to regulate affected transactions on a sliding scale, detailed in Annexure 2 of the Regulations.
- Significant revenue is from **surcharge fees** on listed companies at 25% of the listing fees charged by the JSE and CTSE.
- The Panel earns income from investments, due to strategic reserves.
- **Delistings negatively** impact surcharge fees **on JSE**.
- Strategic **reserves** crucial to Panel's **sustainability** into the foreseeable future.
- The strategic reserves ensure the Panel is able to defend itself in the event of litigation.
- Further, the strategic reserve discourages market participants from suing the Panel for every difference in Takeover Provisions.
- **Ensure** Panel's ability to continue its legislative mandate, including the **protection** of shareholders and maintaining market integrity.

- The **Panel's** research capabilities are limited to **affected transactions** implemented by **regulated companies**.
- The **data** available to the Panel may advise **policymakers** regarding the **market activity** of **public companies** during an **offer period**.
- This would include *inter alia*:
  - ❖ the **type** of **transactions preferred** by market participants in South Africa;
  - ❖ the **type most prevalent offerors** in RSA;
  - ❖ whether most offerors **pay a premium** to the target shareholders; and
  - ❖ **average time** taken to close **offers** regulated by the Panel.

**The End**



Thank you/ Rea Leboha

Website

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