

MARKET NOTICE

The Requirement to Disclose Email Addresses in the Securities Register (BND)

This note seeks to clarify confusion regarding the requirement to disclose a shareholder's email address in the securities register (or the BND). The Companies Act 71 of 2008 (section 50) and the Companies Regulations of 2011 (section 32) prescribe the minimum information that must be entered into the BND of a company.

In terms of section 50 (3) of the Companies Act, other information may also be prescribed by the CSD Rules. It is important to note that in the terms of section 50(3) of the Companies Act, a record of uncertificated securities *'must be administered and maintained by a participant or central securities depository in the prescribed form'*. The statement *'in the prescribed form'* places a duty on the Participant or CSD to ensure that the prescribed information (as required by the Companies Act, the Companies Regulations, CSD Rules and Directives, etc.) is entered into the BND. In terms of section 32(2)(a)(ii) of the Companies Regulations, the securities register must, among other things, contain:

'The person's email address, if available, unless the person has declined to provide an email address'.

It appears that this statement can be misinterpreted to suggest that a shareholder's consent is required before an email address is entered into the BND. Seeking a shareholder's consent would seem to be an impractical exercise and ought not to be the intended legislative result. It is important to take note of one of the objectives of the Companies Act, being *'to define the relationships between the companies and their respective shareholders or members ...'*

It is evident from the Companies Act that communication between the company and its shareholder is of significant importance in the establishment and maintenance of this relationship. For example, the duty of the company to: send financial statements to the shareholders (section 31); send notices of shareholders' meeting to the shareholders (section 62); publish a record date to the shareholders (section 59); send resolutions for voting by the shareholders (section 60 and 65(2)); etc. As such, the said objective of the Companies Act must be considered when interpreting this statement. The intention of the lawmakers with this statement, in particular, prescribing an email address as part of the BND information, would be to promote communication between the company and its shareholders, in support of the said objective of the Companies Act.

The first part of the statement (*'the person's email address if available, ...'*) makes it compulsory for an email address to be entered into the BND, if the shareholder has one. The second part of the statement (*'... unless the person has declined to provide an email address'*), merely gives the shareholder an option to refuse to provide an email address. Therefore, based on the first part of the statement (*'the person's email address if available ...'*), as a default, an email address of a shareholder must always be entered in the BND if the shareholder has an email address. A shareholder's consent is not required. Seeking a shareholder's consent seems impracticable and not supportive of the objectives of the Companies Act.

A practical step would be to request email addresses from the shareholders or clients and enter into the BND those email addresses as may be provided. In instances where a shareholder has already provided an email address, it must as a default, be entered into the BND as required by the Companies Regulations. Shareholder consent will not be required.

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