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IS YOUR SHARE TRANSACTION AFFECTED?

Mr P Bosch is the holder of 10% issued shares in Company XYZ (Pty) Ltd. He enters into negotiations whereby he sells his 10% shareholding to Mrs L Slim. The instruction is passed to the auditors who attend to the Company Secretarial work and the Company Secretarial Manager happily takes the instruction, drafts the required forms and gets it signed. The share transfer is effected and the relevant statutory records and registers updated. As easy as that.

Really? Prior to 1 May 2011 this was in fact the case.

In terms of Section 122 (c) of the Companies Act 2008 this could in effect mean (a) the transaction could be **affected** and (b) the company could now be regarded as a **Regulated Company**.

What is an **affected transaction**?

An **affected** transaction means a transaction or series of transactions amounting to the disposal of all or the greater part of its assets (including securities!) or undertakings other than an approved Business Rescue plan.

How do we know whether a transaction is affected, resulting in the company being a **regulated company**?

The first question we need to ask is: ***has 10% or more of the shares (securities) in the company been transferred to an outsider (not related or inter-related) within the past 24 months preceding the current transaction?***

If the answer is **YES**, the transaction now in process is an affected transaction. The required procedures prescribed in Sections 112, 115 and 119 (6) (exemption) or 121 (compliance) needs to be applied. This entails an application to the TRP (Takeover Regulation Panel).

It is imperative to remember that it is not the transaction history of preceding 24 months that renders the company **regulated**, it is the new transaction that has this effect.

What about a shelf company where shares have been issued on incorporation and the shelf company is now sold and 100% of its shares transferred? Special exemption has been granted and shelf companies do not fall within this requirement. Future transactions may however fall under the definition of **affected transactions**.

BUYBACK OF SHARES are also regulated in the same manner.

FLOWCHARTS TO DETERMINE WHETHER A TRANSACTION IS AFFECTED ON BOTH NEW TRANSFER OR BUY BACK OF SHARES

