



FINANCIAL SERVICES BOARD FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

Date: 12 July 2012

Invitation to comment on the draft amendment of the Requirements Imposed by the Financial Services Board for Nominees to Operate in South Africa

PURPOSE

The purpose of the proposed amendment is to enhance the regulation and governance of all nominee companies and to align it with the requirements of other applicable legislation, i.e. Strate, JSE and the Securities Services Act.

COMMENTS ON PROPOSED DRAFT AMENDMENT

Any interested party is invited to comment on the proposed amendment. Such comments must be submitted to Thiro Moodliyar at thiropathy.moodliyar@fsb.co.za by latest **31 July 2012**.

NOTICE OF 2012

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

I, Dube Phineas Tshidi, the Registrar of Pension Funds, Long-term Insurance, Short-term Insurance, Securities Services and Financial Services Providers, hereby determine 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) and 7(1) of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

the requirements imposed on Nominees to operate in South Africa as set for the in the Schedule.

DP TSHIDI

Registrar of Pension Funds, Long-term Insurance, Short-term Insurance, Securities Services and Financial Services Providers

DRAFT

SCHEDULE

REQUIREMENTS IMPOSED ON NOMINEES TO OPERATE IN SOUTH AFRICA

Definitions

1. In this Schedule:-

“annual expenditure” means the expenditure set out in-

- (a) the latest set of financial statements; or
- (b) in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or other accounts, less-
 - (i) staff bonuses;
 - (ii) sharing in profits by employees, directors, partners and members;
 - (iii) emoluments of directors, members, partners and a sole proprietor;
 - (iv) other appropriation of profits to directors, members and partners; and
 - (v) fifty percent of the commission of representatives not forming part of their salary;

“Companies Act” means the Companies Act, 2008 (Act No. 71 of 2008);

“FAIS Act” means the Financial Advisory and Intermediary Services Act, (Act No. 37 of 2002);

“financial product” means a financial product as defined in the FAIS Act;

“FSB” means the Financial Services Board, established in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

“liquid assets” means cash and other assets equivalent to cash that can be liquidated without realising a loss on liquidation: Provided that-

- (a) 25% of the assets must be capable of being liquidated in seven days;
- (b) a further 25% of the assets must be capable of being liquidated in 30 days; and
- (c) the remaining 50% of the assets must be capable of being liquidated in 60 days;

“LTI Act” means the Long-term Insurance Act, 1998 (Act No. 52 of 1998);

“money” means all money accepted by the Nominee from clients and all money received by the Nominee on behalf of clients for the sole purpose of effecting instructions by clients with regard to

the purchase and selling of the assets on behalf of clients for the payment of expenses in respect of the maintenance thereof;

“Nominee” means 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) or, as defined in the SSA, a person that acts as the registered holder of securities or an interest in securities on behalf of other persons;

“participant” means a participant as defined in section 1 of the SSA;

“PF Act” means the Pension Funds Act, 1956 (Act No. 24 of 1956);

“property” means any property whether movable or immovable, real or intangible and includes any title deed, certificate or other document relating thereto;

“Registrar” means 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 SSA, the Registrar of Securities Services;

“separate bank account” means a bank account used to deposit clients’ money opened in the name of the Nominee.:

“STI Act” means the Short-term Insurance Act, 1998 (Act No 53 of 1998);

“Strate” means Strate Limited, the licensed Central Securities Depository for the electronic settlement of financial instruments in South Africa; and

“SSA” means the Securities Services Act, 2004 (Act No. 36 of 2004).

Compliance required

2. (1) The registrar must approve a-
- (a) Nominee who wish to register or hold any assets of long-term insurers, short-term insurers or pension funds;
 - (b) Nominee of an administrative and discretionary financial services provider; and
 - (c) any Nominee who hold clients' securities in terms of section 36(2) of the SSA require the prior written approval of the Registrar.

(2) The requirements in subparagraph (1) are not applicable to foreign nominees holding assets on behalf of long-term insurers, short-term insurers or pension funds.

(3) Any of the Nominees referred to in sub-paragraph (1), that wish 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 this Notice by the Registrar, in addition comply with the criteria laid down by Strate, determined in terms of section 36(1)(b) and 39(2)(q) of the SSA in Rule 6.6, which provides that:

(a)

"6.6 A 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 sections 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."

- (b) In terms of rule 6.6.4 read with directives issued by Strate, all Nominees must comply with Directives in terms of the Nominee policy.

(4) Applications in terms of sub-paragraph (1) must comply with the requirements set out in paragraph 6 of this Notice.

Authority

3. The authority of the Registrar to approve a Nominee is derived from the following legislation:-

- (a) in the case of long-term insurers, section 34(1)(b) of the LTI Act;
- (b) in the case of short-term insurers, section 33(1)(b) of the STI Act;
- (c) in the case of pension funds, section 5(3) of the PF Act;
- (d) in the case of discretionary and administrative financial services providers, Regulations 6(2) and 7(1) respectively of the Regulations promulgated under the FAIS Act; and
- (e) in the case of other Nominees, in terms of section 36(2) of the SSA.

Principles which underlie the maintenance of registers of ownership of securities

4. The following principles underlie the maintenance of registers of ownership of securities:-

(1) In terms of section 50(3) of the Companies Act, either a central securities depository, such as Strate, or a participant may maintain a register of ownership of uncertificated securities referred to as the Uncertificated Securities Register, as determined by the Rules of Strate, which is defined as a “sub-register” in the Rules of Strate.

(2) In terms of section 36 of the SSA and Rule 6.6 of the Rules of Strate, a Nominee may not appear in a sub-register maintained by a participant unless such Nominee complies with the criteria determined by Strate in Directive SA.7 (which was previously known as Directive SAN).

(3) The Nominee register (sub-sub-register) is the sole record of beneficial ownership in uncertificated securities by persons reflected in this Nominee register.

(4) In terms of section 56 of the Companies Act:

“(3) If a security of a public company is registered in the name of a person who is not the holder of the beneficial interest in all of the securities in the same company held by that person, that registered holder of security must disclose -

- (a) the identity of the person on whose behalf that security is held; and*
- (b) the identity of each person with a beneficial interest in the securities so held, the number and class of securities held for each such person with a beneficial interest, and the extent of each such beneficial interest.*

(4) The information required in terms of subsection (3) must -

- (a) *be disclosed in writing to the company within five business days after the end of every month during which a change has occurred in the information contemplated in subsection (3), or more promptly or frequently to the extent so provided by the requirements of a central securities depository; and*
- (b) *otherwise be provided on payment of a prescribed fee charged by the registered holder of securities.”*

(5) Nominees that wish to operate in the Strate environment must refer to Strate’s Directive SA.7 (previously known as Directive SAN) for guidance.

Requirements

5. (1) A Nominee must be a registered company under the Companies Act, and must ensure that the word “Nominee” is included in its company name and the Memorandum of Incorporation must provide for the following:

- (a) transfer of its issued shares to a natural person must be prohibited;
- (b) transfer of its issued shares without the prior written consent of the Registrar must be prohibited;
- (c) the sole object of the Nominee must be to conduct the business of a Nominee by taking title of assets on behalf of long-term insurers, short-term insurers, pension funds, discretionary and administrative financial services providers or other persons holding such assets in trust and in safe custody or to electronically administer and maintain a Nominee register on their behalf, and otherwise only deal 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; and
- (f) the issuing of any unissued share capital, rights issue, issuing preference shares or debentures by the Nominee without the prior approval of the Registrar must be limited.

(2) The Nominee may not have a natural person as a shareholder and must be wholly owned by:–

- (a) a long-term or short-term insurer as defined in section 1 of the LTI Act and section 1 of the STI Act respectively;

- (b) an authorised user in terms of the SSA;
 - (c) a bank or a bank controlling company as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);
 - (d) a discretionary or administrative financial services provider authorised in terms of section 7 of the FAIS Act;
 - (e) an administrator registered in terms of section 13B of the PF Act where the exclusive object of its Nominee is the holding of pension fund assets;
 - (f) a participant of a central securities depository licensed in terms of the SSA;
 - (g) a central securities depository licensed in terms of the SSA; or
 - (h) an exchange licensed in terms of the SSA.
- (3)(a) More than 50% of the directors responsible for the management and control of the Nominee, including the chairperson of the nominee company, must be persons independent from the Nominee's holding company, and from the companies within the same group of companies as the Nominee's holding company.
- (b) The directors must be suitably qualified to perform their functions of management, control and oversight.
- (4) The Nominee must appoint an auditor approved by the Registrar to audit the financial statements of the nominee.
- (5) The holding company of the Nominee must, to the satisfaction of the Registrar, demonstrate the following requirements:

Honesty and integrity requirement

- (a) The board of directors and management of the holding company must be persons who are honest and diligent, and who act ethically and with integrity and fairness.

Experience requirement

- (b) The holding company must provide evidence of commitment to the employment and retention of numbers of suitably qualified personnel of integrity and the ongoing education of staff in relevant disciplines.

Financial Soundness requirement

- (c) The holding company's assets (excluding goodwill, intangible assets, investments in related parties and investments with persons to whom financial services are rendered by the holding company) must exceed its liabilities (excluding loans subordinated in favour of other creditors) by at least R5 million;

(d) The holding company must maintain current assets which are at least sufficient to meet current liabilities; and

(e) (i) The holding company must at all times maintain liquid assets equal to or greater than 8/52 weeks of annual expenditure.

(ii) A holding company, which is a Category IIA or III financial services provider, must at all times maintain liquid assets equal to or greater than 13/52 weeks of annual expenditure.

Operational ability

(f) The holding company must have a culture and operational structure which is evidence of 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;

(g) The holding company must have documented policies in respect of its internal controls and procedures 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 which meet the following control objectives:

(i) Controls are designed and are operating to enforce ethical behaviour in the nominee environment;

(ii) Controls are designed and are operating to ensure that information is communicated to internal and external parties;

(iii) Controls are in place and are operating to ensure control activities achieve management and the regulator's objectives; and

(iv) Controls are in place and are operating to ensure general computer controls are used to manage the holding company's information technology and computer environment;

(h) The holding company must have 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;

(i) The holding company must ensure that all new releases on changes to proprietary systems are thoroughly tested;

(j) The holding company must ensure that it has business continuity and disaster recovery plans in place that are appropriately documented and tested

(k) The holding company must have appropriate policies in place in respect of its risk management controls and procedures to provide substantial assurance of continuity of the business of its Nominee for the foreseeable future;

(6) Where the holding company outsources the control of the operation of the Nominee register to another company:

- (a) that company to which the control is outsourced must, to the satisfaction of the Registrar, demonstrate that it meets the requirements in terms of paragraphs 5 and 7 of the this Notice;
- (b) there must be a service level agreement in place between the holding company and the company to which the control is outsourced;
- (c) the holding company must monitor adherence to the service level agreement on an on-going basis; and
- (d) the holding company has the obligation to advise clients of the outsourcing arrangement and any changes thereto.

(7) An agreement approved by the Registrar as set out in the prescribed format in Annexure A, or another agreement approved by the Registrar must be entered into by the holding company and the Nominee. The holding company must inform the Registrar at least 30 days prior to termination of this agreement of its intention to terminate the agreement.

Application procedures

6. (1) An application for approval of a Nominee must be lodged with the Financial Services Board as indicated on the application form in **Annexure A** to the Notice and must include the following documentation:

- (a) A copy of the Memorandum and Articles of Association, where applicable, or a copy of the Memorandum of Incorporation of the Nominee;
- (b) A copy of the most recent audited financial statements of the Nominee, if applicable;
- (c) A copy of the most recent audited financial statements of the holding company;
- (d) A copy of the signed agreement between the holding company and the Nominee attached as **Annexure B**; and
- (e) A copy of the draft standard agreement between the Nominee and its clients.

(2) The Nominee must in its application clearly indicate whether it intends to participate in the Strate environment and whether it will hold assets on behalf of pension fund, a long-term insurer or a short-term insurer.

(3) Where the Nominee applies to hold assets on behalf of more than one of the institutions referred to in sub-paragraph (2), it may lodge only one application, but the Registrars concerned must grant separate approvals in terms of the applicable legislation should the application be successful.

(3) The holding company that applies for approval of a Nominee must pay the fees prescribed in terms of the relevant legislation.

(4) No application for approval of a Nominee has to be lodged with the Registrar, if the Nominee:

- (a) only 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
- (b) is a subsidiary of an authorised user of the JSE Limited or a participant of Strate, that is approved as a Nominee in accordance with section 36(1) of the SSA.

Continued obligations by the Holding Company and Nominee

7. (1) A nominee must:-

- (a) have adequate insurance against loss through fire, theft and other disaster in place for assets held by the nominee as well as fidelity guarantee cover
- (b) have adequate professional indemnity insurance in place;
- (c) conclude a written agreement with each pension fund, short-term insurer, or long-term insurer whose assets it will hold and the agreement must comply with the minimum requirements as determined by the Registrar: Provided that in terms of Strate participants this requirement is not applicable.

(2) The board of directors of the Nominee must have at least quarterly meetings and must be satisfied that:

- (a) the Holding company has adequate procedures in place for ensuring that proper reconciliation of the number of investments held in its name and reflected in the client records of the Holding company, and the number of investments reflected in the records of the product supplier, takes place on an ongoing basis, and that such procedures are adhered to by the Holding company;

- (b) the Holding company has adequate procedures in place to ensure proper reconciliation of amounts deposited in the Holding company's separate bank account with the investments placed in the name of the Nominee on behalf of clients, and that such procedures are adhered to by the Holding company;
- (c) the investments held in the name of the Nominee on behalf of clients are legitimate financial products, money or property, within the categories in respect of which the Holding company holds a valid licence, where applicable, and where any investment held in the name of the Nominee on behalf of clients is not a financial product, money or property as defined in this Notice that such investment is legitimate and that the Holding company has notified the Registrar of its intention to make such investment available to clients or prospective clients for investment, at least one month prior to it making the investment so available;
- (d) procedures are implemented by the Nominee in order to ensure that the duties stipulated in this Notice are carried out on continuous basis;
- (e) the nature of the errors and difficulties that impacted on the ability of the Holding company to conduct its business in accordance with these Requirements during the year under review is summarised and reported to the Registrar;
- (f) the Holding company provides it with quarterly reports, which -
 - (i) detail the reconciliation of securities;
 - (ii) confirm that the reports are prepared and checked by senior management on a monthly basis;
 - (ii) record the number of investments held in the name of the Nominee and reflected in the client records of the Holding company and the number of investments reflected in the records of the product supplier; and
 - (ii) where applicable, record the amounts invested in the financial services provider's separate bank account with investments made in the name of the Nominee on behalf of clients.

(4) The chairperson of the board of directors of the nominee company must inform the Registrar if the reconciliation reports are not done on a monthly basis within seven days of becoming aware of the fact that a reconciliation did not take place.

(5) A Nominee must annually within four months of its financial year-end submit to the Registrar:

- (a) audited financial statements;

- (b) an audit report in the prescribed format setting out whether any assets held on behalf of any other person in safe custody are in possession of the Nominee and properly accounted for and include assurance on:
- (i) the internal controls and procedures implemented and maintained by the Holding company to ensure compliance with this Notice;
 - (ii) the appropriateness of information technology systems utilised to support the internal controls and procedures including proper backup systems and business continuation and disaster recovery;
 - (iii) the amount of assets held by the nominee in a fiduciary capacity on behalf of clients at the year end;
 - (iv) the segregation of such assets from that of the holding company throughout the financial year and in the case of non-compliance, the extent thereof; and
 - (v) the existence, appropriateness and implementation of governance and compliance framework established and maintained by the holding company and nominee;

(6) A declaration by the Holding company of the Nominee in the format as specified in **Annexure B** must be submitted to the Registrar every six months.

(7) A member of the JSE Limited, and a participant and their Nominees must comply with this paragraph if they hold securities on behalf of either pension funds or long- and short-term insurers.

Withdrawal of approval of a Nominee

8. The Registrar may at any time withdraw the approval of a Nominee if he or she is satisfied that:

- (1) the Nominee, its Holding company or the company to which the control over the Nominee register has been outsourced failed to comply with the requirements as set out in this Notice or any additional requirements set by Strate; or
- (2) the Nominee failed to submit the documentation prescribed in paragraph 7(5), (6) and (7) of this Notice to the Registrar concerned.

9. Upon withdrawal of the approval of a Nominee the auditor must issue a report as prescribed in paragraph 7(5)(b).

Register of approved nominees

10. A register of all approved Nominees, specifying the categories of approval, will be published by the FSB on its official website.

11. The JSE Limited and Strate must advise the Registrar of any changes regarding Nominees approved by them within 15 days of such approvals and any changes thereto.

Transitional provisions

12. (1) The requirements set out in this Notice apply to all new applications with immediate effect.

(2) A Nominee with a financial year-end prior to the publication of this Notice must submit the audit reports prescribed in paragraph 7(5)(a) of this Notice within six months from the date of publication of this Notice.

(3) The holding company of the Nominee must comply with the financial soundness requirements contained in paragraph 5(5)(c) of this Notice within 24 months from the date of the publication of this Notice.

(4) A Nominee and a Holding company must within three months from the commencement of this Notice comply with any other provision that was not previously applicable to them.

(5) A Nominee that must effect a change of its name in order to comply with paragraph 5(1) of this Notice must do so within 12 months from the date of publication of this Notice,

Repeals

13. The requirements set out in this Notice replace the requirements in terms of which any Nominee was approved before the commencement date of this Notice. The Nominee Requirements, 2003 are hereby repealed.

Updating

14. The registrar may from time to time publish by notice in the *Gazette* an updated version of this Schedule, including the Annexures.

Short title and commencement

15. The Notice is called the Notice on Nominee Requirements, 2012 and comes into operation on the date of publication thereof in the *Gazette*.

DRAFT FOR DISCUSSION

ANNEXURE A

SIX MONTHLY DECLARATION BY HOLDING COMPANY TO THE REGISTRAR

REPUBLIC OF SOUTH AFRICA DECLARATION BY A PERSON ACTING AS A DIRECTOR, MANAGING EXECUTIVE OR COMPLIANCE OFFICER OF A HOLDING COMPANY OF AN APPROVED NOMINEE	
1.	Holding Company _____
2.	Title and surname _____
3.	Full names(s): _____
4.	Name of the NOMINEE in connection with which this declaration forms is submitted _____
5.	Date on which approval was granted to the Nominee by the Registrar. _____
6.	State in what capacity you are completing this form (e.g. 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, the company complied with "Notice on Nominee Requirements, 2012" for the period _____
8.	List any non-compliance with the Notice on Nominee Requirements, 2012
9.	Material change(s) to information since the last date of submission is / are: (indicate the effective date of the change).
10.	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 of this Notice.

	Signature of Authorised Officer

	Date

**ANNEXURE B
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/her 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/her 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 (Act No 52 of 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 (Act No 53 of 1998), to the extent authorised by the Registrar; and
- Registered pension funds as envisaged by section 5(3) of the Pension Funds Act, 1956 (Act No 24 of 1956), to the extent authorised by the Registrar; and
- Other investors in terms of the Securities Services Act, 2004 (Act No 36 of 2004)
- Clients of administrative and discretionary FSPs as approved in terms of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, 2002 (Act No 37 of 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 “clients” shall mean any person or body corporate that 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 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” means securities as defined in the Securities Services Act, 2004
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- 1.5 “securities services” means services provided in terms of the Securities Services Act, 2004 in respect of-
 - (a) the buying and selling of securities;
 - (b) the custody and administration of securities;
 - (c) the management of securities by an authorised 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 from clients and all money received by the Nominee 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 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 of Pension funds 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 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 client 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 client 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 Securities Services Act, 2004 (Act No 36 of 2004) 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 calculation 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'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 registered bank or in the case of a financial services provider clients' money will be dealt with as provided for in terms of Financial Advisory and Services Act, 2002.
- 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 cash so deposited in accordance with the 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 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 immediately provide a client with any information reasonable 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 regulatory (in terms of the requirements of the relevant legislation) to its client on assets held on their behalf and shall include all movements and shall include all movements and changes in the holding concerned which occurred which 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 of Incorporation, 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' fee;
- 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 insurance premiums payable by the Nominee in respect of any policy of 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 or she is acquitted, or connection with any application under section 77(9) of the Companies Act, 2008 (Act No. 71 of 2008), in which relief is granted to him or her 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 contactors.

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 major, 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 Limited and/or the JSE Limited, 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 or her with reasons therefore.

9. Cession

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

10. Utmost Good Faith

The Nominee and Holding Company shall at all times act and display towards their clients the utmost good faith as between principal and agent in all its actions and disclosures concerning the assets the Nominee 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 _____ on this
_____ day of _____ 20__

(Insert name of the Holding Company)

DIRECTOR

AS WITNESSES:

- 1. _____
- 2. _____

THUS DONE AND SIGNED AT _____ on this _____
day of _____ 20__

(Insert name of the Nominee)

← _____
DIRECTOR

AS WITNESSES:

- 1. _____
- 2. _____

**ANNEXURE A
APPLICATION FORM**

**FINANCIAL SERVICES BOARD
APPLICATION FOR APPROVAL AS NOMINEE**



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, 1998 (ACT NO 52 OF 1998), IN TERMS OF SECTION 33(1)(b) OF THE SHORT-TERM INSURANCE ACT, 1998 (ACT NO 53 OF 1998) OR SECTION 5(3) OF THE PENSION FUND ACT, 1956 (ACT NO 24 OF 1956) AND APPROVAL TO HOLD UNCERTIFICATED SECURITIES ACCOUNTS IN THE STRATE ENVIRONMENT IN TERMS OF SECTION 36(2) OF THE SECURITIES SERVICES ACT, 2004 (ACT NO 36 OF 2004) (“ACTS”) AND ON BEHALF OF CLIENTS OF DISCRETIONARY AND ADMINISTRATIVE FINANCIAL SERVICES PROVIDERS IN TERMS OF REGULATION 6(2) AND 7(1) OF THE REGULATIONS PROMULGATED UNDER THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO 37 OF 2002)

A. Instructions for Completion and Submission

1. For all definitions please refer to the Nominees Requirements, 2012.
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 electronically, -
 - (a) delete the solid lines in those areas provided for answers before the answers are typed or use the overtyping mode whilst the answers are typed.
 - (b) rows may be inserted where insufficient space is provided for answers.
 - 4.2 If the form is completed by hand, (should the space provided not be sufficient) the details 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 typed or written information, those changes must be signed.
5. The application must 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 Fund Act, Regulation 6(2)

and 7(1) of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, and section 36(2) of the Securities Services Act.

2. This form must be accompanied by the prescribed fees (refer to paragraph 7.1) as well as all the documentation requested in the requirements (refer paragraph 7.2).

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, , Regulation 6(2) and 7(1) of the Regulations promulgated under the Financial Advisory and Intermediary Services Act, and section 36(2) of the Securities Services Act, , an insurer, pension fund or financial services provider may 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.

2. Nominees approved in terms of the Acts, that wish 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.

D. Specific Information

I, _____ the _____ undersigned, _____ being _____ a/the
_____ of _____

—
hereby apply for approval to allow the holding of assets by a South African Nominee in terms of the requirements.

¹. *Insert title, and indicate whether you have the authority*

The following information is provided in support of the application.

1. Approval is requested for the following

To hold assets on behalf of:

- 1.1 Long-term Insurer/s
- 1.2 Short-term Insurer/s
- 1.3 Pension Fund/s
- 1.4 Clients of Administrative Financial Services Providers
- 1.5 Clients of Discretionary Financial Services Providers
- 1.5 Clients in the State environment as a custodian of securities
- 1.6 Other investors in terms of section 36 (2) of the Securities Services Act

YES	NO

DRAFT FOR DISCUSSION

2. Nominee

2.1 State the name of the Nominee

2.2 Confirm that the Nominee -

2.2.1 is a registered company under the Companies Act; 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

². If the answer is "No" provide explanation/details.

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, and section 1 of the Short-term Insurance Act, respectively;

(ii) an authorised user as defined In section 1 of the Securities Services Act 2004, (Act No 36 of 2004);

(iii) a financial services provider authorised in terms of the Financial Advisory and Intermediary Services Act, 2002;

(iv) 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;

(v) a participant of a Central Securities Depository licensed in terms of the Securities Services Act, 2004;

(vi) a central securities depository licensed in terms of the Securities Services Act, 2004;

(vii) an exchange licensed in terms of the Securities Services Act, 2004.

YES	NO

^{3.} If the answer is "No" provide explanation/details

3.2 State the –

(a) name of the holding company referred to 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

DR

(f) 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

(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", provide the following:

Details of the outsourced company:

Name:

Contactperson:

Contact details:

Is the outsourcing company one of the following?

	YES	NO
<ul style="list-style-type: none"> • 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 		
<ul style="list-style-type: none"> • an authorised user in terms of the Securities Services Act, 2004; or 		
<ul style="list-style-type: none"> • a bank or a bank controlling company as defined in section 1(1) of the Bank Act, 1990; or 		
<ul style="list-style-type: none"> • a discretionary or administrative financial services provider (“FSP”) as approved in terms of section 7 of the Financial Advisory and Intermediary Services Act, 2002; or 		
<ul style="list-style-type: none"> • an administrator registered in terms of section 13B of the Pension Funds Act, 1956 where the exclusive object of its Nominee is holding of pension fund asset; or 		
<ul style="list-style-type: none"> • a central securities depository licensed in terms of Securities Services Act, 2004; 		
<ul style="list-style-type: none"> • an exchange licensed in terms of the Securities Services Act, 2004; 		

Attach evidence that the outsourcing company comply with paragraph 5 to 7 of 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”, provide the following:

- (i) A document setting out the organizational structure of the Nominee’s holding company or division thereof responsible for the operations of the Nominee;
- (ii) a list of 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.

3.4 Confirm the following regarding the holding company:		YES	NO
3.4.1	Does the holding company have an internal audit function?		
3.4.2	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		
3.4.3	Is there a code of ethics, approved by the board of directors, at the Nominee's holding company?		
3.4.4	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		
3.4.5	Is there a compliance officer appointed at the holding company?		
3.4.6	Is the compliance officer aware of the continuing obligations in respect of the Nominee?		
3.4.7	Is there a risk management process or a documented system of risk management at the holding company		

⁴. If the answer is "No" provide explanation/details

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:		YES	NO
(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, from 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

⁵ If the answer is "No" provide explanation/details.

- 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 of 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, BESA or Strate;
 - (c) A provision precluding the change or cancellation of the above agreement before informing the FSB and JSE, BESA or Strate, where applicable;
 - (d) A provision that the company providing the outsource services must submit written evidence demonstrating that it has met the requirements in terms of point 5.2.2.1 to 5.2.2.7

	YES	NO
4.2		
4.3		
4.4		
4.5		
(a)		
(b)		
(c)		
(d)		

5. Did the holding company of the applicant inform its auditor(s) and statutory actuary (where one is appointed) of this applicant**?

	YES	NO ⁶

⁶ If the answer is "No" provide explanation/details

*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 ⁷	NO

⁷ If the answer is "Yes", specify the information or documents

7. I hereby enclose (indicate with a X)

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

R5 235 for the approval to hold long-term insurance assets;

R5 235 for the approval to hold short-term insurance assets;

R4 515 for the approval to hold pension fund assets;

R5 150 for discretionary and administrative financial services providers; and

R4 300 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 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, submit written evidence that it has met the requirements in terms of clause 5.2.2.1 to 5.2.2.7 of the requirements of the Nominee

I hereby certify that the holding company (delete whichever is not applicable):

(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 other 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 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 unauthorized 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 resource represented by a minimum of R 3 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.

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 forenames(s), surnames and capacity of the authorised person

—

SIGNATURE OF AUTHORISED PERSON

DATE

Limited Assurance Report of the Independent Auditor of [name of nominee company and nominee's holding company] on certain requirements imposed by the Financial Services Board for nominee companies to operate in South Africa

To the directors of [name of nominee company and nominee's holding company] and to the Registrar¹ of the Financial Services Board

We have undertaken an engagement on [insert name of nominee company and nominee's holding company] ("the nominee company" and "the nominee's holding company") for the year ended [insert year end date] relative to paragraph 7(5) of Requirements imposed by the Financial Services Board for Nominees to operate in South Africa, 2012².

We are required to provide limited assurance on the design, implementation and operating effectiveness of the key controls identified by management as set out in Schedule A. We are also required to report on whether Schedule B, which sets out the nature and values of assets held on behalf of clients in a fiduciary capacity, the balance per the nominee company's records, agrees to the relevant underlying records; and to obtain such as evidence as we considered appropriate in the circumstances regarding the existence and valuation of the assets. We are required to report such matters coming to our attention arising from our work performed.

Because of their nature, the controls at the nominee company and nominee holding company may not prevent or detect or correct the errors or omissions in processing or reporting transactions and balances. Also, the projection to the future of any evaluation of the fairness of the presentation of the description or the conclusions of the suitability of the design or operating effectiveness of the controls to achieve the related control objective is subject to the risk that controls at a nominee company or nominee holding company may become inadequate or fail.

Directors' responsibilities

The directors of the nominee company and the nominee holding company are responsible for such internal control as is necessary to ensure that all the assets under the nominee's control exist, are correctly accounted for and enable the identification of the beneficial owners to be determined. The directors are also responsible for identifying the key controls reflected in Schedule A, and the preparation of the information in Schedule B, that is free from material misstatement, whether due to fraud or error.

Auditor's responsibility

Our responsibility is to express a limited assurance conclusion on the design, implementation and operating effectiveness of the key controls identified by management in Schedule A, based on our work performed and to report on any matters coming to our attention in respect of the information in Schedule B that does not agree to the underlying records, does not exist or is incorrectly valued.

We conducted our limited assurance engagement on Schedule A in accordance with the International Standard on Assurance Engagements ISAE 3000 *International Standard on Assurance Engagements other than Audits or Reviews of Historical Financial Information*. This standard requires us to comply with ethical requirements and to plan and perform our assurance engagement to obtain sufficient appropriate evidence to support our limited assurance conclusion.

We planned and performed our work to obtain all the information and explanations that we considered necessary to provide sufficient evidence for us to express our limited assurance conclusion and matters coming to our attention as expressed below.

¹ Address to the applicable Registrar of: Pension Funds, Long-term Insurance, Short-term Insurance, Security Services or Financial Services Providers.

² Or such other notice as may be issued from time to time.

We believe that the evidence obtained as part of our limited assurance engagement is sufficient and appropriate to provide a basis for our limited assurance conclusion on those matters set out in Schedule A and to report on Schedule B in accordance with our work performed.

Summary of work performed

Summary of work performed on Schedule A

Our work performed and findings on the key controls identified by management are set out in Schedule A, and included inquiries primarily of persons responsible for the internal control, financial and accounting matters at the nominee company and the nominee holding company throughout the year, limited observations and testing of controls. In addition, we obtained written representations from management regarding matters relevant to this engagement.

Summary of work performed on Schedule B

- We agreed the total and the categorisation of the assets held to the underlying records.
- We obtained third party confirmations regarding existence and valuation for a sample of assets reflected in categories 1, 2 and 4 of Schedule B, re-performed reconciliations for material balances and traced a sample of outstanding reconciling items to subsequent statements.
- We obtained evidence that the basis of valuation for categories 1, 2 and 4 of Schedule B agrees to the underlying records.
- We obtained evidence of existence of **all** the assets reflected in categories 3, 5 and 6 of Schedule B and that the basis of valuation agrees to the underlying records.
- We obtained written representations from the directors of the nominee holding company regarding matters that we have considered relevant to this engagement.

In a limited assurance engagement the evidence gathering procedures are more limited than for a reasonable assurance engagement and therefore less assurance is obtained than in a reasonable assurance engagement.

Conclusion

Based on our work described in this report, nothing has come to our attention that causes us to believe that the key controls identified by the directors as set out in Schedule A were not designed, implemented and operated effectively throughout the year ended [insert year end date].

Other than matters reported as coming to our attention, we agreed the information as set out in Schedule B to the relevant underlying records.

Restriction on use

Our report is for the purpose indicated in the first paragraph and for the information of the nominee company, the nominee holding company and the Registrar and may not be suitable for another purpose.

Auditor's Signature

Name of individual registered auditor

Registered Auditor

Date of auditor's report

Auditor's address

Schedule A – Work performed and findings in respect of the key controls to meet the objectives of the requirements of the nominee company and nominee holding company

Instructions for completion of Schedule A:

Refer to the columns indicated in the table below:

- A. Control objective:**
The control objectives are derived from certain requirements imposed by the Financial Services Board for nominee companies to operate in South Africa.
- B. Key control:**
The directors of the nominee company and the nominee holding company are to identify the key controls (description).
- C. Design:**
The auditor indicates whether the design of the key controls is considered appropriate to achieve the control objective (yes/no) (if no, complete column G).
- D. Implementation**
The auditor indicates whether the key controls have been implemented (yes/no) (if no, complete column G).
- E. Operating effectiveness**
The auditor indicates whether the key controls implemented operated effectively for the period under review (yes/no) (if no, complete column G).
- F. Work performed**
Brief summary of work performed to evaluate the appropriateness of the design of the key controls implemented by management and evaluate the operating effectiveness of such controls (description).
- G. Identified weaknesses and potential impact**
Based on work performed and evidence obtained, the auditor reports weaknesses identified in the design of key controls and/or the implementation of the key controls and/or instances of key controls not operating effectively, and the potential impact thereof (description).
- H. Directors' response**
Insert the response of the directors of the nominee company and nominee holding company to identified weaknesses in internal controls (description).

Schedule A - Work performed and findings in respect of the key controls to meet the objectives of the requirements of the nominee company

A	B	C	D	E	F	G	H
Control objectives	Key control: Indicate the key control implemented by the nominee company to meet this objective	Design: Evaluate the appropriateness of the design of the key control	Implementation: Assess whether the key control has been implemented	Operating effectiveness: Evaluate whether the key control operated effectively for the period under review	Work performed	Identified instances of weaknesses in key internal controls and potential impact thereof	Management of the nominee company's response to the finding
1. Controls provide assurance regarding the governance of the nominee company and the nominee holding company							
1.1 Controls provide assurance that ethical values and integrity are enforced and communicated by management.							
1.2 Controls provide assurance that competent individuals are hired and that staff have the necessary skills and character traits of honesty and integrity to perform their tasks.							
1.3 Controls provide assurance that risks in respect of unethical behaviour are identified, monitored and mitigated.							
1.4 Controls provide assurance that business risks are identified, monitored and actioned accordingly.							
1.5 Controls provide assurance that there is compliance with relevant laws and regulations as well as non-binding rules and regulations.							

<p>1.6 Controls provide assurance that related parties and conflicts of interest are identified and managed (internal and external – this also includes communication to those relevant parties of these related parties and conflicts of interest).</p>							
<p>2. Controls provide assurance regarding the nominee company's and the nominee holding company's ability to communicate effectively with internal and external parties</p>							
<p>2. 1 Controls provide assurance that information is communicated internally between the nominee holding company and the nominee company and employees in an accurate and timely manner and in compliance with the relevant legislation.</p>							
<p>2. 2 Controls provide assurance that information is communicated to external parties (e.g. clients, other third parties and regulators) in an accurate and timely manner and in compliance with the relevant legislation.</p>							
<p>3. Controls provide assurance regarding the nominee company's and nominee holding company's internal control processes</p>							
<p>3.1 Controls provide assurance that policies and procedures are in place to establish an environment of effective internal controls.</p>							
<p>3.2 Controls provide assurance that the nominee company and the nominee holding company maintains, monitors and reviews the effectiveness of internal controls on an ongoing basis.</p>							
<p>3.3 Controls provide assurance that the nominee company and the nominee holding company monitors and</p>							

has adequate insurance against loss through fire, theft and other disasters as well as professional indemnity and/or fidelity insurance.							
3.4 Controls provide assurance that proper processes and procedures exist in the segregation of duties in the different functions and responsibilities.							
3.5 Controls provide assurance that access to processes and procedures are restricted to staff that have the necessary authorisation to perform this function.							
4. Controls provide assurance that physical access to computer equipment, systems, storage media and program documentation is restricted to properly authorised individuals							
4.1 Controls provide assurance that there are physical access controls to servers.							
4.2 Controls provide assurance that there is security monitoring.							
4.3 Controls provide assurance that there are adequate environmental controls (e.g. fire, floods etc) to prevent loss.							
5. Controls provide assurance that logical access to system resources (for example, programs, data, tables, and parameters) is restricted to properly authorised individuals							
5.1 Controls provide assurance that there is an effective access policy.							
5.2 Controls provide assurance that there are controls regarding user administration.							
5.3 Controls provide assurance there are controls regarding the recertification of							

user accounts.							
5.4 Controls provide assurance that there are access restrictions and segregation of duties.							
5.5 Controls provide assurance that the security settings are in accordance with baseline standards.							
5.6 Controls provide assurance that security settings are monitored.							
5.7 Controls provide assurance regarding the changes to baseline standards.							
6. Controls provide assurance that system data is regularly backed up and archived data is available for restoration in the event of processing errors and/or unexpected interruptions and ensures business continuity in case of a disaster							
6.1 Controls provide assurance that there are daily backups and that backups can be restored.							
6.2 Controls provide assurance that failed backups are monitored and resolved.							
6.3 Controls provide assurance that there are rotation schedules.							
6.4 Controls provide assurance that there are service level agreements with those to whom the IT function has been delegated and that service levels are monitored and reported.							
6.5 Controls provide assurance that there are system restores.							
6.6 Controls provide assurance that there is a disaster recovery plan and that it has been tested.							

7. Controls provide assurance that program and system developments is continually assessed and follow a systems and program development life cycle							
7.1 Controls provide assurance that there is a change management policy.							
7.2 Controls provide assurance that there is adequate approval of change requests.							
7.3 Controls provide assurance regarding the logging, prioritising and tracking of change requests.							
7.4 Controls provide assurance that back-out plans are adequate.							
7.5 Controls provide assurance that the test environment exists and is adequate.							
7.6 Controls provide assurance that changes are signed off.							
7.7 Controls provide assurance that signed off changes are migrated to the production environment.							
7.8 Controls provide assurance that developer access is monitored.							
8. Controls provide assurance that proper oversight is in place over delegated functions performed by the service organisations							
8.1 Controls provide assurance that the nominee company and nominee holding company has controls in place to ensure that the nominee company and the nominee holding company has service level agreements in place with third parties and the third party organisations.							
8.2 Controls provide assurance that the nominee company and the nominee							

holding company monitors compliance by the third party to the service level agreement.							
9. Controls specific to nominee company's and nominee holding company's statutory responsibilities							
9.1 Controls provide assurance that a written agreement, complying with the relevant legislation, between the nominee company and clients (i.e. pension fund, short-term insurer, or long-term insurer) on whose behalf assets will be/is held.							
9.2 Controls provide assurance that the nominee company and nominee holding company documents its systems of internal controls which ensures that the assets of clients are safeguarded and segregated and that the records accurately reflect the assets and information which they purport to present.							
9.3 Controls provide assurance that the nominee holding company maintains adequate financial resources to comply with the relevant financial soundness requirements as set out in the prescribed Nominee Requirements.							
9.4 Controls provide assurance that the nominee company has not incurred any liabilities other than those in respect of the entities/persons on whose behalf it holds assets.							
9.5 Controls provide assurance that the nominee holding company has implemented procedures that ensure the regular							

reconciliation of the client investments to evidence of existence from external parties.							
9.6 Controls provide assurance that the beneficial owners of the investment are clearly identified in the underlying records of the nominee company.							
9.7 Controls provide assurance that cash receipt transactions are recorded accurately, timely and in accordance with the applicable legislation that governs the nominee company and nominee holding company.							
9.8 Controls provide assurance that investment and disinvestment transactions are processed and recorded accurately (including the allocation to the beneficial owner), timely and completely.							
9.9 Controls provide assurance that distributions are processed and recorded accurately (including the allocation to the beneficial owner), timely and in accordance with instructions received from the client.							
9.10 Controls provide assurance that market prices are recorded accurately (including the allocation to the beneficial owner), timely and completely.							
9.11 Controls provide assurance that, where data is transferred to/from different administration systems and/or accounting systems, the							

resultant information captured into the financial reporting systems is complete, accurate and valid.

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Schedule B – Assets held on behalf of clients in a fiduciary capacity by the nominee company

		<Insert year-end date>	
Indicate nature of assets		Balance per nominee company's records	Basis of valuation of asset category or asset item
		R	
1	Collective investment schemes (as registered in terms of the Collective Investments Schemes Act) <Total>		
2	Listed securities <Insert totals by category of shares, property portfolios, bonds, derivatives, ETFs, ETNs etc.>		
3	Unlisted securities <Insert details by holding, including unlisted property companies>		
4	Property <Insert details by property (movable or immovable, real or intangible)>		
5	Money <Insert totals per category of cash and cash equivalents held in the name of the nominee company, not included in any of the other categories>		
6	Other assets <Insert details per item>		
TOTAL AS PER NOTE TO THE NOMINEE COMPANY'S FINANCIAL STATEMENTS			

Matters coming to our attention arising from our work performed

<Insert details regarding non-existence of assets, incorrect valuations or unexplained differences>