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## GENERAL NOTICE

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### NOTICE 273 OF 2008

**Draft regulations** to be issued in terms of section 10(1)(d) of the Income Tax Act, 1962, are hereby released for public comment.

It would be appreciated if comments on the draft regulations could be furnished by **Monday, 24 March 2008**. Due to time constraints, it will not be possible to respond individually to comments received. All comments will however be fully considered.

Comments must be submitted to:

Ms. Adele Collins

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### DRAFT

### SOUTH AFRICAN REVENUE SERVICE

R. NO.

2008

**DRAFT OF REGULATIONS TO BE ISSUED IN TERMS OF SECTION 10(1)(d)(iii) AND (iv) OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), TO PRESCRIBE CONDITIONS ON WHICH THE COMMISSIONER MUST APPROVE AN ENTITY FOR PURPOSES OF THAT SECTION**

### SCHEDULE

#### *Definitions*

1. In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning assigned thereto and—

“entity” means any—

- (a) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry (or an association of such chambers) or local publicity association contemplated in section 10(1)(d)(iii) of that Act; and

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(b) company, society or other association of persons contemplated in section 10(1)(d)(iv) of that Act with the sole or principal object to function as a representative body for persons that carry on a particular business, profession or occupation;

“member” in the case of a fidelity or indemnity fund includes a contributor to that fund; and

“mutual loan association” means an association with the sole or principal object to function as a voluntary savings association where participants make regular contributions into a common pool managed by the members for the mutual financial benefit of such members.

*Conditions*

2. The Commissioner must approve an entity for purposes of section 10(1)(d)(iii) or (iv) of the Income Tax Act, 1962, if—

- (a) that entity has submitted to the Commissioner a copy of the constitution or written instrument under which it has been established;
- (b) in terms of the constitution or written instrument contemplated in paragraph (a)—
  - (i) it must have a committee, board of management or similar governing body consisting of at least three persons, who are not connected persons in relation to each other to accept the fiduciary responsibility for that entity;
  - (ii) no single person may directly or indirectly control the decision making powers relating to that entity;
  - (iii) it may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its objectives unless expressly otherwise provided for in these regulations;
  - (iv) it is required to utilise substantially the whole of its funds for the sole or principal object for which it has been established;

**DRAFT***Non-compliance*

4. Where the constitution or written instrument of an entity does not comply with paragraph 2(b) of these regulations, the Commissioner may deem it to so comply if the persons who have accepted fiduciary responsibility for the funds and assets of that entity furnish the Commissioner with a written undertaking that the entity will be administered in compliance with that paragraph.

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