

RETURNS TO BE SUBMITTED IN TERMS OF SECTION 26 OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

To identify issuers of any remaining share warrants to bearer, Government Notice No. 421 of 14 June 2013 in terms of section 26 of the Tax Administration Act, 2011 (Act No. 28 of 2011) has been issued. Section 36 of the Companies Act, 1926 (Act No. 46 of 1926) and its successor, section 101 of the Companies Act, 1973 (Act No. 61 of 1973), which was effective until 30 April 2011, allowed companies to issue share warrants to bearer. The Companies Act, 2008 (Act No. 71 of 2008), which took effect on 1 May 2011, no longer allows the issue of share warrants to bearer. The South African Revenue Service would like to ascertain which of these share warrants to bearer instruments are still in circulation. Regulation 15 of the Exchange Control Regulations of 1961 published in GNR. 1111 of 1 December 1961 prohibited the issue, acquisition or disposal of, payment of dividends relating to, or other dealings in bearer securities.

In terms of the Government Notice No. 421 of 14 June 2013, Return SWB001 is the Return for a company to report information on share warrants to bearer issued by the company under the above provisions.

The path where the Return SWB001 can be found is www.sars.gov.za > Legal & Policy > Secondary Legislation > Public Notice or www.sars.gov.za > Legal & Policy > Legal & Policy Publications > Find a Form.

Completed Returns should be emailed to bsw@sars.gov.za or posted to Legislative Research and Development, Legal and Policy, Private Bag X923, Pretoria, 0001 and are due on or before 31 July 2013.

Companies Act No. 46 of 1926

“36. (1) A company limited by shares, if so authorized by its articles, may, with respect to only fully paid-up shares, or to stock, issue a warrant (in this Act termed a share warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant: Provided that no share warrant shall be issued in respect of any vendors’ promoters’, founders’, or management shares before the expiration of six months immediately succeeding the registration of the company.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and such shares or stock may be transferred by the delivery of the share warrant.

(3) The bearer of a share warrant shall, subject to the articles of the company, be entitled, on surrendering it for cancellation, to have his name entered as a member in the register of members; and the company shall be liable for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the share warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified, in respect of the shares or stock specified in the warrant, to be a director or manager of the company in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely: -

(a) the fact of the issue of the warrant;

(b) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(c) the date of the issue of the warrant.

(6) Until the warrant is surrendered, the said particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.”

In terms of section 9 of the Currency and Exchanges Act No. 9 of 1933, Regulation 15 of the Exchange Control Regulation, 1961 was published in GNR. 1111 of 1 December 1961

“15. Prohibition of dealings in bearer securities and bearer options. -

(1) No person shall pay any dividend or interest coupon issued in respect of any bearer security irrespective of whether such coupon became payable before or becomes payable after the commencement of this regulation.

(2) No person shall issue any bearer option or extend the currency period of any existing bearer option.

(3) No person shall dispose of, acquire or otherwise deal in:

(a) any bearer security;

(b) any bearer option issued after the date of publication of this Proclamation in the Gazette.

(4) The owner of any bearer security may with the permission of the Treasury and in accordance with such conditions as the Treasury may impose, convert such security into a registered security.

(5) Application for permission to convert any bearer security into any registered security shall be accompanied by a sworn declaration in such form as the Treasury may prescribe, duly completed by the owner of the security or his authorised agent.

(6) (a) The Treasury or a person authorised by the Treasury may grant exemptions from the provisions of subregulations (1), (2) and (3).

(b) The provisions of sub-regulation (5) shall apply mutatis mutandis in respect of applications for exemption under paragraph (a) of this sub-regulation relating to bearer securities or to dividend or interest coupons issued in respect of such bearer securities.

(7) The provisions of this regulation shall apply in respect of all bearer securities and bearer options irrespective of whether such securities or options were or are issued inside or outside the Republic.

(8) For the purposes of this regulation “option” means the right to subscribe for or take up the whole or any part of an issue of capital.”

Companies Act No. 61 of 1973

“101. Share warrants to bearer. -

(1) A public company having a share capital, if so authorized by its articles, may, with respect to any paid-up shares, or to stock, issue a warrant (in this Act termed a share warrant) stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant.

(2) A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and such shares or stock may be transferred by the delivery of the share warrant.”