



# **Companies Tribunal**

## **(5) Five Year Strategic Plan**

**2018/19 – 2022/23**

## TABLE OF CONTENTS

1. Acronyms and Abbreviations .....	4
2. Foreword by Minister .....	5
3. Overview of the Accounting Authority .....	7
4. Official plan sign-off .....	9
5. Strategic Overview .....	10
5.1 Background .....	10
5.2 The Planning Process .....	10
5.3 Mandate .....	10
5.4 Vision Statement .....	11
5.5 Mission .....	11
5.6 Values .....	11
5.7 Alignment with the National Development Plan, Nine Point Plan and the dti's strategic objectives .....	12
5.8 Products and services .....	13
5.9 Legislative and Policy Mandates .....	13
5.10 Decisions of the Courts .....	14
5.11 Situational Analysis .....	15
5.11.1 PESTAL Analysis .....	15
5.11.2 SWOT Analysis .....	16
6. Detailed Analysis of Goals and Organisational Objectives .....	17
7. Tribunal Structure .....	18
7.1 Governance Structure .....	18
7.2 Operational Structure .....	19
8. Synopsis of Key Performance Areas .....	20
9. Financial Management Strategy .....	23
9.1 Multi-Year Financial Projections .....	23
9.2 Materiality and Significance of Framework .....	25
10. Risk Register .....	26
11. Human Resource Strategy .....	36
12. Information Technology Strategy .....	38
13. Communication Strategy .....	39
14. Anti-fraud and Corruption Policy .....	40

15.	Annexure A: Materiality and significance framework .....	42
1.	Definitions .....	42
2.	Introduction .....	42
3.	Framework.....	42

## **1. Acronyms and Abbreviations**

CA:	Companies Act, 2008 No. 71 of 2008
CCRD:	Consumer and Corporate Regulation Division
CIPC:	Companies and Intellectual Property Commission
COTII:	Council of Trade and Industry Institutions
DTI:	Department of Trade and Industry
PFMA:	Public Finance Management Act
IT:	Information Technology
MTEF:	Medium Term Expenditure Framework
PEST:	Political, Economic, Social and Technological
SOP:	Standard Operating Procedures
SWOT:	Strength, Weaknesses, Opportunities and Threats

## 2. Foreword by Minister



The Companies Tribunal was established with the aim of making redress mechanisms readily available to all South Africans, particularly the indigent who can't afford the fees associated with protracted litigation. The Tribunal offers an expeditious and cost free mechanism of resolving company disputes.

It is further aimed at promoting a culture of resolving company disputes through ADR i.e. mediation, conciliation and arbitration. ADR can be used to resolve disputes involving shareholders, directors and business rescue. In the case of business rescue with all parties working together, the chances of success can be increased as result of the fact that ADR offers room for creative solutions in dispute resolution. It is important that the Tribunal increases its efforts by reaching out to the judiciary and legal practitioners to encourage the use of ADR to resolve company disputes. Resolving disputes through ADR impacts positively on the economy of the country as it saves costs associated with lost productivity and legal fees.

The Tribunal is to collaborate with stakeholders such as municipalities and other government entities to increase its footprint in order to distribute information across the country including in rural communities.

The potential that the Tribunal holds for contributing to South Africa's jurisprudence should also not be undermined. Since its inception the Tribunal has issued more than 1450 decisions. These decisions involved amongst others the interpretation of concept such as "confusingly similar" and "public interest" in cases of name disputes and social and ethics committee applications respectively. The envisaged amendment to the Companies Act is intended to enhance the functioning of the

Tribunal by increasing the scope of applications falling under its mandate. It is expected that such enhancement will result in increase in the Tribunal's case load.

I am certain that the Tribunal will continue to play a significant role in contributing to a fair regulatory environment to bolster investor confidence in the country's redress mechanism.

A handwritten signature in black ink, appearing to read 'R. Davies', with a large, stylized initial 'R'.

Dr Rob Davies, MP  
Minister of Trade and Industry

### **3. Overview of the Accounting Authority**

It is a pleasure to present the Companies Tribunal's five year strategic plan ending March 2023. The strategic plan sets out a five year plan for the Companies Tribunal (the Tribunal) to deliver on its mandate and realize its vision of being a world class regulatory and alternative dispute resolution organisation that contributes to the promotion of fair and ethical corporate practices. The Tribunal's strategic plan is informed by the values and founding provisions of the Constitution, International Law, the Companies Act, No. 71 of 2008 as well as the Department of Trade and Industry's strategic objective of creating a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner.

The Tribunal came into operation in 2012 and derives its mandate from the Companies Act, No. 71 of 2008. Its mandate is to adjudicate on applications made in terms of the Act and make orders in respect of such applications, assist in the resolution of disputes in terms of ADR and perform any other function assigned to it in terms of the Act or any laws mentioned in Schedule 4 of the Act. The types of applications that the Tribunal can consider include name and directorship disputes, review of compliances notices issued by CIPC, application to hold annual general meeting (AGM), an extension of time to hold an AGM as well as applications for exemption from establishing social and ethics committees. The Tribunal can through ADR also assist in the resolution of any dispute arising from the Companies Act.

The Tribunal's case load is expected to increase over the medium term as a result of the envisaged amendments to the Companies Act which is expected to increase the powers of the Tribunal. Furthermore some of the exemptions that were granted from establishing social and ethics committees will be coming to an end and companies may lodge new applications with the Tribunal. The Tribunal will be embarking on a robust campaign using both electronic and print media to raise awareness about the workings of the Tribunal. Stakeholders such as business chambers, law societies and municipalities will be engaged with a view of forming strategic partnerships to disseminate information about the Tribunal throughout the country.

In an environment characterised by a difficult economic climate, the use of Alternative Dispute Resolution (ADR) as a preferred mode of resolving company disputes is expected to rise over the next 5 year as it is costs saving in nature compared to litigation. The Tribunal is to undertake research in the area of arbitration to enhance its ADR services. The Tribunal's organisational structure will be reviewed to address some of the deficiencies identified in the original structure approved to carry out the mandate of the Tribunal to promote excellence and position the Tribunal

as a world-class organisation. The automated case management system with facilities such as e-filing will be completed resulting in improved efficiency in the management of cases.

I am therefore confident that the Tribunal will deliver on its mandate and thus contribute to the realisation of a fair and ethical corporate environment.



-----  
Dr Alli Chicktay  
Accounting Authority

#### 4. Official plan sign-off

It is hereby certified that this Strategic Plan:

- Was developed by the Companies Tribunal;
- Takes into account all the relevant policies, legislation and other mandates for which the Companies Tribunal is responsible;
- Reviewed the current strategic plan ending March 2021;
- Accurately reflects the strategic outcome oriented goals and objectives which the Companies Tribunal will endeavour to achieve over the periods ending 31 March 2023.



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Accounting Authority  
(Chairperson)

Date: 31 January 2018

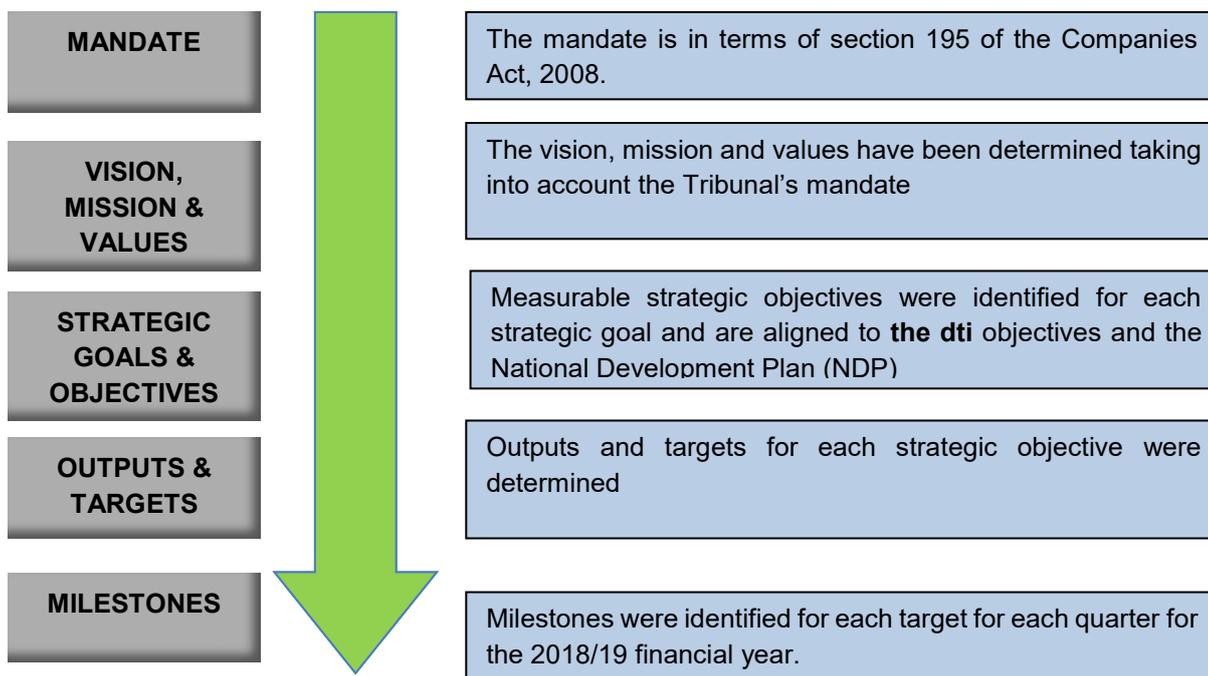
## 5. Strategic Overview

### 5.1 Background

The Companies Tribunal was established in terms of the Companies Act, 2008 to adjudicate on applications/complaints and referrals in terms of the Companies Act (“CA”). Fourteen independent Members of the Tribunal including the Chairperson were appointed by the Minister of Trade and Industry for a period of five years. The Tribunal’s mandate includes adjudicating and hearing of applications and cases referred to it in accordance with the CA.

### 5.2 The Planning Process

In compiling the strategic plan, the Companies Tribunal ensured that there is alignment with all the key processes followed. The diagram below outlines the roadmap followed to ensure strategic alignment of all processes.



### 5.3 Mandate

The Companies Tribunal is established in terms of the Companies Act, Act No. 71 of 2008, as a juristic person. In terms of the Act the Tribunal has jurisdiction throughout the Republic. It is independent and subject only to the Constitution and law.

The Companies Tribunal's mandate in terms of the Companies Act is to:

- a) Adjudicate in relation to any application that may be made to it in terms of the Act and make any order provided for in the Act in respect of any such application.
- b) Assist in the resolution of disputes as contemplated in part C of Chapter 7 of the Act.
- c) Perform any other function assigned to it by or in terms of the Act or any law in Schedule 4.

In delivering on this mandate the Companies Tribunal is expected to exercise and perform its functions in line with the spirit, purpose and objects of the Constitution, International Law and Companies Act, and in a manner which is simple, ethical, efficient, equitable, transparent, accountable, impartial and without fear, favour or prejudice.

#### **5.4 Vision Statement**

A world class adjudicatory and alternative dispute resolution Tribunal that contributes to the promotion of fair and ethical corporate practices.

#### **5.5 Mission**

- To adjudicate applications made in terms of the Companies Act and make orders in respect of such applications
- To facilitate the resolution of company disputes through conciliation, mediation and arbitration.

#### **5.6 Values**

The Tribunal's values are:

- **Accountability:** delivering on our plans and commitments and taking responsibility for our conduct;
- **Impartiality:** conducting ourselves in a fair and just manner, without fear, favour or prejudice;
- **Transparency:** to be reasonably open about our policies, procedures and conduct;
- **Equitability:** to be fair and just to all persons as dictated by reason, policies and norms of the Tribunal;
- **Efficiency:** to produce outputs expeditiously with optimum use of resources;
- **Accessibility:** to be readily available to the public and stakeholders;
- **Professionalism:** to be courteous, punctual, and responsible in adhering to policies, values and the code of conduct of the Tribunal when dealing with the public and other stakeholders;
- **Respect:** to treat all people with dignity and honour in accordance with the values of the Tribunal;
- **Ethical:** to act with integrity and to be guided by the Tribunal's Code of Conduct and policies.

### 5.7 Alignment with the National Development Plan, Nine Point Plan and the dti's strategic objectives

The table below shows the linkage between the Tribunal's strategic goals, the National Development Plan, Nine Point Plan and **the dti's** objectives.

National Development Plan (NDP)	NINE POINT PLAN	the dti Strategic Objectives	Programmes and strategic goals
Reduce the cost of regulatory compliance		Create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner	<p><b>Adjudication:</b> Adjudicate and make orders in relation to any application.</p> <p>Facilitate the resolution of company disputes in terms of Alternative</p>

National Development Plan (NDP)	NINE POINT PLAN	the dti Strategic Objectives	Programmes and strategic goals
			Dispute Resolution (ADR)
Broaden participation: more inclusive economic growth	Unlocking the potential of SMME, Cooperatives, Townships and rural enterprises	Facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth	Administration: Ensure effective stakeholder engagement.
A capable and developmental state: institutional capability	Moderating workplace conflict	Promote a professional, competitive and customer-focused working environment that ensures effective and efficient service delivery	Ensure operational effectiveness and efficiency of the Tribunal

## 5.8 Products and services

The Companies Tribunal provides adjudication and alternative dispute resolution services. Alternative dispute resolution service involves conciliation, mediation and arbitration service.

## 5.9 Legislative and Policy Mandates

In addition to the founding legislation viz. the Companies Act, as well as the Tribunal's Policies and Procedures, the Tribunal has considered the following sets of legislation and policy prescripts, in the development of the strategy and in its operations:

## ***The Constitution of the Republic of South Africa:***

Through its adjudicative mandate and its consideration of matters of prohibited conduct and fair business practice, the Tribunal plays a significant role in upholding and preserving the principles enshrined in the Bill of Rights. Specifically, the Tribunal has a direct impact on the following areas within the Constitution of the country, under the **Bill of Rights** chapter:

- **Sub-section 9: Equality** – Through remaining accessible to diverse groupings of consumers and businesses, the Tribunal plays its role in ensuring that parties have the right to equal protection and benefit of the law. Additionally, the Tribunal strives through its value system to respect human diversity and ensure that no form of discrimination, if any, is tolerated.
- **Sub-section 10: Human dignity** – Through the adjudication process, the Tribunal ensures that prohibited conduct, as well as the relevant action thereto does not impair human dignity.
- **Sub-section 14: Privacy** – Whilst adhering to its founding legislation, and as part of the adjudicative role, the Tribunal ensures that the privacy of persons is protected.
- **Sub-section 33: Just administrative action** – The Tribunal ensures it hears both sides to a dispute and that it issues reasons for its decisions.

### **5.10 Decisions of the Courts**

The Tribunal will analyse recent key decisions of the High Court and Constitutional Court and evaluate the potential impact on its mandate and functions.

## 5.11 Situational Analysis

### 5.11.1 PESTAL Analysis

The Tribunal conducted a PESTAL analysis to enable it to achieve its strategic objectives. The results are tabled below:

<b>Political</b>	<b>Economic</b>
<ul style="list-style-type: none"><li>• Perception of political alignment on decision-making or being non-partisan</li><li>• Legislative amendments</li><li>• Change of administration</li></ul>	<ul style="list-style-type: none"><li>• Business fronting</li><li>• Funds availability</li><li>• Slow economic growth</li></ul>
<b>Social</b>	<b>Technology</b>
<ul style="list-style-type: none"><li>• Access to the Tribunal by members of the public</li><li>• Illiteracy</li><li>• Language diversity</li><li>• Awareness of the Tribunal</li><li>• Misconception about Tribunal jurisdiction by members of the public</li></ul>	<ul style="list-style-type: none"><li>• Technology use to promote access</li><li>• Efficiency as a result of technology use (e.g. case management)</li></ul>
<b>Legal</b>	<b>Environmental</b>
<ul style="list-style-type: none"><li>• Limited jurisdiction to meet public expectations</li><li>• Legislative amendments</li></ul>	<ul style="list-style-type: none"><li>• Lack of appropriate office accommodation, hearing rooms and parking space</li></ul>

### 5.11.2 SWOT Analysis

A detailed SWOT (strength, weaknesses, opportunities, threats) analysis was performed. The results are tabled below:

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> <li>• Ethical behaviour</li> <li>• Enabling legislation (mandate)</li> <li>• Skills, knowledge and expertise of staff and Tribunal Members</li> <li>• Systems, procedures and policies in place</li> <li>• Independent and impartial</li> <li>• Good corporate governance and financial management</li> </ul>	<ul style="list-style-type: none"> <li>• No professional, equipped hearing rooms</li> <li>• No adequate parking</li> <li>• External dependencies (e.g. Internal Audit function and IT infrastructure outsourced)</li> <li>• Limited budget to carry out mandate and fill vacancies</li> <li>• Limited jurisdiction of Companies Tribunal</li> <li>• Geographical limitations (situated only in Pretoria)</li> <li>• Limited synergy between members and staff</li> <li>• Uncertainty about roles and responsibilities among members</li> <li>• Limited marketing and communication</li> </ul>
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> <li>• Increasing access through technology usage (e-filing, video conferencing for hearings)</li> <li>• Adoption and adaption of best practice models from similar entities</li> <li>• Contribution to research, jurisprudence and the development of company law</li> <li>• Technology – systems and processes to improve efficiency</li> <li>• Increase referrals to the Tribunal from CIPC, TRP and direction from other Tribunals and the judiciary</li> </ul>	<ul style="list-style-type: none"> <li>• Staff turnover</li> <li>• Potential backlog</li> <li>• Delays in appointment of Members</li> <li>• Competition from other alternative dispute resolution bodies</li> <li>• Ambiguity of the ADR provisions within the Companies Act</li> <li>• The voluntary and alternative nature of ADR</li> </ul>

## 6. Detailed Analysis of Goals and Organisational Objectives

The specific strategic goals are each supported by measurable objectives.

Below is a list of each strategic goal supported by its core strategic objective/s.

Strategic Goals	Strategic Objectives
1. Adjudicate and make orders in relation to any application.	1.1. Adjudicate applications professionally, timeously, fairly and in a transparent manner.
2. Facilitate the resolution of company disputes in terms of Alternative Dispute Resolution (ADR).	2.1. Facilitate alternative dispute resolution processes in a professional, cost effective, impartial, informal and timeous manner.
3. Ensure operational effectiveness and efficiency of the Tribunal	3.1. Recruit, appoint, develop and retain competent staff for the Tribunal 3.2. Build a body of knowledge around company law and alternative dispute resolution 3.3. Ensure the efficient management of cases.
4. Ensure effective stakeholder engagement	4.1. Educate members of the public and create awareness of the Tribunal 4.2. Create sustainable and symbiotic relationships with stakeholders.

## 7. Tribunal Structure

### 7.1 Governance Structure

**EXECUTING AUTHORITY: Minister of Trade and Industry**

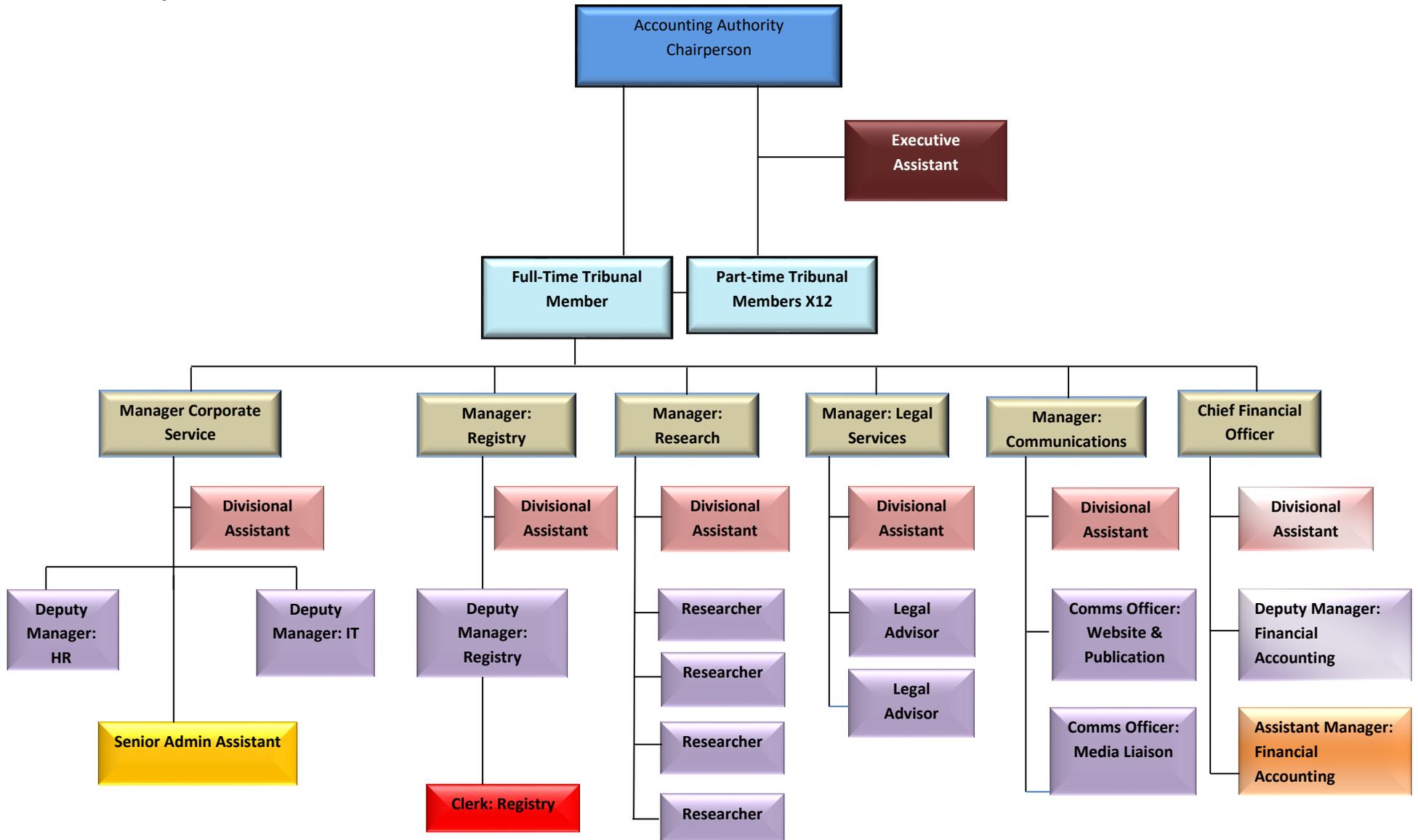
**ACCOUNTING AUTHORITY: Chairperson of the CT**

**GOVERNANCE COMMITTEES**

The Chairperson of the Tribunal as the Accounting Authority is responsible for the governance and oversight of the Tribunal as well as the management of cases. The Tribunal reports through the Consumer and Corporate Regulation Division (CCRD) and the Public Entity Oversight Unit of the Department of Trade and Industry (“**the dti**”) to the Executing Authority, the Minister of Trade and Industry.

The Tribunal has governance committees to assist the Chairperson in executing the mandate of the Tribunal. The committees operate by way of Terms of Reference approved by the Accounting Authority.

## 7.2 Operational Structure



## 8. Synopsis of Key Performance Areas

SECTION	FOCUS AREA/S WITHIN THE TRIBUNAL
<b>ACCOUNTING AUTHORITY (CHAIRPERSON)</b>	<ol style="list-style-type: none"> <li>1. Provide strategic leadership and direction</li> <li>2. Oversee the adjudication and allocation of cases</li> <li>3. Official spokesperson for the Tribunal.</li> </ol>
<b>FULL-TIME TRIBUNAL MEMBERS</b>	<ol style="list-style-type: none"> <li>1. Oversee day to day management and operations of the Tribunal</li> <li>2. Strategic support to the Chairperson of the Tribunal in respect of operations and adjudications</li> <li>3. Management of special projects of the Tribunal including the identification and development of special projects to facilitate execution of the Tribunal's mandate</li> <li>4. Develop linkages and relationships for the Tribunal</li> <li>5. Adjudication on applications that may be made to the Tribunal and making any order provided for in the Acts in respect of such an application</li> <li>6. Facilitate the resolution of disputes in terms of ADR</li> <li>7. Perform any function assigned to the Tribunal in terms of the Act</li> <li>8. Ensure compliance with Tribunal policies, procedures and processes.</li> </ol>
<b>PART-TIME TRIBUNAL MEMBERS</b>	<ol style="list-style-type: none"> <li>1. Adjudication on applications that may be made to the Tribunal and making any order provided for in the Acts in respect of such an application</li> <li>2. Facilitate the resolution of disputes in terms of Alternative Dispute Resolution (ADR)</li> <li>3. Perform any function assigned to the Tribunal in terms of the Act</li> <li>4. Adherence to Tribunal policies, procedures and processes.</li> </ol>
<b>REGISTRY DIVISION</b>	<ol style="list-style-type: none"> <li>1. Case management</li> <li>2. Assist Chairperson with allocation of cases</li> <li>3. Communicating and informing parties relating to the progress of their cases and Tribunal procedures</li> </ol>

SECTION	FOCUS AREA/S WITHIN THE TRIBUNAL
	<ol style="list-style-type: none"> <li>4. Management of all enquiries made with the Tribunal</li> <li>5. Custodian of all Tribunal cases, documents and knowledge management systems.</li> </ol>
<b>LEGAL SERVICES DIVISION</b>	<ol style="list-style-type: none"> <li>1. Legal support to the Tribunal</li> <li>2. Research (substantive and procedural issues)</li> <li>3. Analyse and advise Chairperson and Tribunal Members on cases</li> <li>4. Draft and review contracts</li> </ol>
<b>CORPORATE SERVICES DIVISION</b>	<ol style="list-style-type: none"> <li>1. Organisational planning, monitoring and reporting</li> <li>2. Human resource management</li> <li>3. Secretariat functions for the Tribunal (including Audit and Risk committee)</li> <li>4. Organisational risk management processes</li> <li>5. Risk and compliance monitoring and reporting (including internal and external audit administration)</li> <li>6. Organisational support in logistical matters</li> <li>7. Development and implementation of Corporate Services policies and procedures</li> <li>8. Facilities management</li> <li>9. Information and communications technology</li> <li>10. Implementation of the corporate governance framework.</li> </ol>
<b>RESEARCH DIVISION</b>	<ol style="list-style-type: none"> <li>1. Development, Management and coordination of specific assigned research</li> <li>2. Analysis of trends on cases</li> <li>3. General research, policy development and analysis</li> <li>4. Monitoring and evaluation</li> <li>5. Provision of inputs into review of Companies Act and recommend areas of change</li> <li>6. Conduct impact analysis.</li> </ol>
<b>CHIEF FINANCIAL OFFICER</b>	<ol style="list-style-type: none"> <li>1. Financial planning, management, monitoring, and reporting</li> <li>2. Development and implementation of financial policies, guidelines and procedures</li> </ol>

SECTION	FOCUS AREA/S WITHIN THE TRIBUNAL
	<ul style="list-style-type: none"> <li>3. Asset management</li> <li>4. Cash and investment management</li> <li>5. Risk Management</li> <li>6. Supply Chain Management.</li> </ul>
<b>COMMUNICATION DIVISION</b>	<ul style="list-style-type: none"> <li>1. Communication and Marketing to enhance the Tribunal's corporate identity</li> <li>2. Communicating the outcomes of cases through relevant publications</li> <li>3. Management of media relations</li> <li>4. Preparation of speeches and presentations for conferences, workshops, to the Minister and Parliament</li> <li>5. Ensuring the internal and external communication of the role and processes of the Tribunal with its stakeholders</li> <li>6. Developing linkages and relationships for the Tribunal with relevant stakeholders.</li> </ul>

## 9. Financial Management Strategy

The budget of the Tribunal will be monitored monthly. The actual expenditure will be compared against the budget to determine whether spending is in line with the budget and to further understand and correct variances (if any). Budget will be reviewed mid-year as part of annual budget adjustments. In terms of financial monitoring and control, the Tribunal will implement cash flow projections to determine where expenditure is heading in order to ensure that additional funding requirements are communicated in good time as necessary.

Financial discipline and efficiency savings will be key considerations in ensuring that the Tribunal is able to optimise on available funding should caseloads grow by more than was anticipated in the budget. To ensure accurate financial reports, Caseware system has been implemented and the Procurement Officer would be appointed to ensure that there is a dedicated human resource to monitor compliance with supply chain management rules and regulations. To ensure efficient and effective control environment, consequence management will continue to be implemented to enforce compliance with PFMA and all related rules and regulations. The policies will continue to be reviewed to ensure compliance with new rules and regulations and to ensure that the clean audit is maintained throughout the years.

### 9.1 Multi-Year Financial Projections

The following allocations have been made to the Tribunal by **the dti** for the specific periods indicated:

	Actual 2016/17	Budget 2017/18	Budget 2018/19	Budget 2019/20	Budget 2020/21	Budget 2021/22	Budget 2022/23
R thousand							
Grant allocation	15,069	15,822	16,740	17,677	27,998	30,798	33,878
Interest received	1,383	600	498	300	110	400	510
Revenue in-kind	1,266	-	-	-	-	-	-

Income from surplus funds	-	7,430	3,733	1,294	-	-	-
<b>Total income</b>	<b>17,718</b>	<b>23,852</b>	<b>20,971</b>	<b>19,271</b>	<b>28,108</b>	<b>31,198</b>	<b>34,388</b>
<b>Expenditure</b>	<b>20,607</b>	<b>23,852</b>	<b>20,971</b>	<b>19,271</b>	<b>28,108</b>	<b>31,198</b>	<b>34,388</b>
Compensation of employees	11 725	14,310	15,269	16,277	17,334	19,067	20,973
Goods and services	8 659	9,322	5,504	2,816	10,614	11,911	13,170
Depreciation	223	220	198	178	160	220	245
<b>Surplus/(Deficit)</b>	<b>(2 889)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

The grant allocation for years 2016/17 to 2019/20 reflects the actual amounts allocated on the ENE ending 2019/20. The allocated grant for each financial year is insufficient to meet the Tribunal's operational requirements to enable the Tribunal to operate optimally. To augment the deficit, Tribunal would be utilizing income from surplus funds to fund some of the operational and administrative expenditure.

From the year 2019/20, the Tribunal would require an increase in the baseline as it is anticipated that the income from surplus funds would have been fully utilized, with R1 million remaining for 2019/20. The Tribunal has requested an increase in baseline for 2019/20 as the approved surplus funds would have been depleted by that time, however it was not granted thus affecting the going concern of the Tribunal. The Tribunal will however consider generating income from filing fees, but this process will take some time to materialize due to extensive consultations and planning required. Furthermore the income to be generated will in the earlier years not exceed 10% of the Tribunal's budget and as such not be sufficient to meet the Tribunal's requirements.

Compensation of employees has been determined according to the anticipated number of vacancies filled. No new positions would be filled due to budgetary constraints. Of the 28 approved posts only 16 posts would be filled and this will remain unchanged until the baseline has been increased. Compensation of employees also includes an annual inflation adjustment as per MTEF guidelines. Three (3) internships are also included in the compensation of employee's budget to augment capacity constraints whilst alleviating unemployment amongst the youth by providing them with proper training and skills.

Goods and services budget also includes the remuneration of Tribunal members which would increase over MTEF due to the anticipated increase in the number of cases to be received by Tribunal.

Capital expenses have been budgeted at minimum levels to enable the Tribunal to remain functional. Capital expenses include the acquiring of ICT infrastructure, equipment and furniture. Due to budgetary constraints no funding has been provided for the acquisition of alternative office accommodation to meet the Tribunal’s needs with regard to office space and hearing rooms even though the current space has been constraining to accommodate the needs and expansion of the Tribunal. This means the Tribunal will continue to occupy **the dti** offices at no cost.

## 9.2 Materiality and Significance of Framework

The best indicator with regard to the Tribunal’s non-capital intensive business activity is the higher of revenue or expenditure. For this reason 0.60% of budgeted expenditure is chosen with regard to this framework, and this basis is consistent with prior years.

The implications, based on the estimated budget, are summarized as follows:

(For further details see annexure A)

Item	% Used	2016/17 R'000	2017/18 R'000	2018/19 R'000	2019/20 R'000	2020/21 R'000	2021/22 R'000	2022/23 R'000
<b>Budget</b>	0.60 %	<b>23,397</b>	<b>23,852</b>	<b>20,971</b>	<b>19,271</b>	<b>28,108</b>	<b>31,198</b>	<b>34,388</b>
<b>Materiality</b>		140	143	126	116	167	187	206

## 10. Risk Register

Risk Number	Risk Category	Risk Description	Background to risk	Inherent Risk	Residual Risk	Possible Additional Action/Controls	Due Date	Responsible
1	<b>OPERATION</b> <b>AL-</b> <b>Reputational</b> <b>Risk</b>	1. Failed ADR  2. Applicant may opt to use a different forum other than Companies Tribunal resulting in loss of customer base.	1. Parties not agreeing to the proposed solutions  2. Outside the jurisdiction of the Tribunal	<b>16</b>	<b>16</b>	Recommending the amendment of the Act to consider making ADR Compulsory	October 2017	Legal Adviser

			<p>3. Either party not acting in good faith</p> <p>4. Lack of confidence in the Companies Tribunal ADR processes.</p> <p>5. Limitations of the ADR Regulatory Framework</p>					
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2	<b>STRATEGIC-Performance and Reputational Risk</b>	Poor service delivery resulting from delays in finalising cases.	<ol style="list-style-type: none"> <li>1. Non-existence of a performance management system for Tribunal members</li> <li>2. Inadequate monitoring of applications due to manual tracking system</li> </ol>	25	18	<ol style="list-style-type: none"> <li>1. Agreements to be introduced to ensure accountability on delivering on commitments by Members</li> <li>2. Procure case management software</li> </ol>	<p>August 2017</p> <p>April 2018</p>	<p>Full-Time Tribunal Member</p> <p>Manager: Registry</p>
3	<b>OPERATIONAL-Human Capital Risk</b>	Lack of capacity to perform effectively (vacant critical positions)	Limited funding for positions	20	20	<ol style="list-style-type: none"> <li>1. Motivate for funding for critical positions</li> <li>2. Job rotation</li> </ol>	<p>October 2017</p> <p>March 2018</p>	<p>FTM</p> <p>Deputy Manager: HR</p>

4	<b>STRATEGIC - Human Capital Risk</b>	<p>1. Higher staff turnover</p> <p>2. Poor productivity due to wellness issues.</p> <p>3. Non-compliance with Human Resource /Labour laws.</p>	<p>1. Low morale leading to demotivated employees</p> <p>High work load</p> <p>2. Wellness issues</p> <p>3. Poor communication of policies and labour laws.</p>	20	20	<p>1. Review the organisational structure and HR Policies &amp; Procedures</p> <p>2. Development and implementation of a Wellness Events Calendar</p> <p>3. Communication of policies and labour laws.</p>	<p>March 2019</p> <p>December 2017</p> <p>March 2018</p> <p>September 2017</p>	Deputy Manager: HR
5	<b>STRATEGIC- Performance Risk</b>	1. Inability to meet planned targets/poor service delivery	1. Non-compliance with the Performance Management System	20	14	1. Consequence management	Quarterly and bi-annually	Deputy Manager: HR

		2. Labour unrest	2. Inability to reward good performance adequately			2a. Review reward criteria on Performance Management System.  b. Develop guidelines for non-monetary performance reward.	November 2017  September 2017	
6	STRATEGIC-Financial	Inability to fund critical operations	1. Insufficient grant funding  2. Inability to generate income from services	20	20	1. Motivate for increase in baseline funding during the budget adjustment period  2. Recommend amendment to Companies Act to enable revenue generation	October 2017  March 2018	CFO  FTM

7	<b>OPERATIONAL - Operational</b>	Delays in the adjudication process due to clients not understanding the process resulting in backlogs	<ol style="list-style-type: none"> <li>1. Incomplete applications</li> <li>2. Lack of understanding of the process</li> <li>3. Failure to comply with requirements of the Companies Act</li> <li>4. Delays in filing amendment documents (Act does not specify what can be amended and the standard allowable time).</li> </ol>	<b>20</b>	<b>14</b>	<ol style="list-style-type: none"> <li>1. Include advice in the future</li> <li>2. Increase education and awareness initiatives</li> <li>3. Increase education and awareness initiatives</li> <li>4. Increase frequency of follow-ups with clients</li> </ol>	<p>Ongoing</p> <p>November 2017</p> <p>September 2017</p>	<p>Registrar</p> <p>Registrar/Manager: Communication</p>
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			5. Delays in filing default order applications			5. Increase frequency of follow-ups with clients	September 2017	
8	<b>OPERATIONAL - Reputational /Human Capital Risk</b>	1. Delays in processing applications within the stipulated time	1. Incomplete applications and supporting documentation received resulting in Members not being able to adjudicate over a matter  2. Members not meeting turnaround times	16	11	1. Comprehensive review by Legal Services to ensure all documentation is complete before file is handed over for adjudication  2. Performance Agreements for Members.	March 2018	Registry
9	<b>OPERATIONAL - Legal Risk</b>	Litigation cases through CCMA and Labour Court	1. Violation of Code of Ethics by employees  2. Violation of Code of Conduct	20	14	1. Induction for new employees and staff training  2. Signing of Code of Conduct	1. March 2018	Deputy Manager: HR

			3. Disciplinary procedures not conducted with due care (conflict of interest/biased)			3. Training on management of disciplinary cases	2. September 2017 3. March 2018	
<b>10</b>	<b>OPERATIONAL - Communication Risk</b>	1. Failure to reach target market  2. Lack of awareness of existence or services of CT	1. Insufficient funding  2. Lack of human resources  3. Environment is technical causing the communication barrier	<b>16</b>	<b>11</b>	1. Motivate for additional funding  2. Fill the vacancy of Communications Manager  3. Translate marketing and promotional material to indigenous languages	1. October 2017  2. March 2018  3. September 2017	CFO  CFO/ Deputy Manager: HR  Manager: Communications

<b>11</b>	<b>OPERATIONAL-Technology Risk</b>	1. Delays in IT project delivery	1a. Insufficient funding of the projects	<b>25</b>	<b>13</b>	1a. Motivate for additional funding	October 2017	CFO/ Deputy Manager: IT
			1b. Lack of internal capacity			1b. Outsource IT solutions such as Office 365	September 2017	
		2. Excessive delays in outsourced IT development projects				2. Enforcement of penalty provisions in the SLA		
		3. IT projects budget overruns	3. Lack of proper monitoring, non-adherence to project plan (scope creep).			3. Project management team and IT Committees to monitor projects.	Ongoing	
	4. Incorrect technology solution				4. Review BCP and development of	September 2017		

						configuration document.		
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## **11. Human Resource Strategy**

Delivering on the Tribunal mandate without the necessary human resources to implement the strategic plan remains a challenge. The purpose of the HR Strategy is to fill all strategic vacant positions timeously and with the correct calibre candidates to meet the envisaged growth path of the Tribunal. The Tribunal will undertake a review of the organisational structure to address some of the deficiencies that have been identified. The review process will involve change management and undertaking of a skills audit to ensure the optimum utilisation of current skills. The strategy also aims to retain high performing staff, training of current staff and up-skilling staff for purposes of succession-planning. HR systems will be implemented in line with the ICT strategy to facilitate smooth, efficient and effective HR management.

The Tribunal endeavours to have a high-performance culture linked to rewards for excellent performance.

The Tribunal's human resource management approach seeks to gain competitive advantage through the strategic development of a highly committed and capable workforce. In order to realise this strategic HR outcome, the following human resource management principles will be practiced within the Tribunal:

- HR management will be rolled out as an area of responsibility for managers
- Developing a sustainable organisational culture. The Tribunal will develop and sustain an organisational culture that encourages all members of staff to be highly committed to the organisation and its continuous improvement
- Prioritising staff development
- Managing performance
- Retaining of high performing staff
- Equity in employment opportunities and promoting fairness principles

- Considering and incorporating the outcomes of formal job evaluation exercises as part of HR strategic planning from time to time
- Contributing to youth development by offering internships to students in line with government youth employment initiatives
- Complying with all applicable HR legislation and policies.

## **12. Information Technology Strategy**

The Tribunal's operations and the expected increased demand for Tribunal services indicate the need for efficient handling and management of cases. The Tribunal will need to automate its core business processes in order to enhance operational efficiency. Information communication technology (ICT) was identified as the key driver to enhance operational efficiency.

ICT operations at the Tribunal will receive priority over the next five-year period. The Tribunal will therefore focus its efforts on ensuring that it aligns its ICT to growing strategic needs and standards of excellence. After the implementation of the systems and processes that are currently under design, ICT will focus on maintaining and updating those systems and processes going forward. This will enable the Tribunal to make sound decisions on cases and manage the cases expeditiously.

The over-arching objective of ICT in the Tribunal will remain aimed at the acquisition, implementation and maintenance of ICT technologies to improve and enhance service delivery having regard to costs and benefits and the direction of emerging technology.

### **13. Communication Strategy**

The development and implementation of a communication strategy remains key to the Tribunal being accessible to members of the public and other stakeholders. Communication strategy involves the identification of activities throughout the year that, when taken as a whole, incrementally communicate the Tribunal's messages to its stakeholders.

The strategy furthermore entails creating awareness of its purpose, processes and timeframes to its stakeholders. However, due to the Tribunal's specific mandate, the communication strategy will be limited to raise awareness only with regards to its own processes, applications and timeframes applicable. The strategy is sufficiently flexible to be responsive to any developments in respect of the Tribunal's enhanced mandate and any subsequent increased caseload.

Communication must be purposeful and timely particularly in relation to consultation and decision-making. Branding will be a continuous priority to enhance the image and recognition of the Tribunal amongst its stakeholders.

The Tribunal will identify alternative points of access to ensure that all stakeholders can interact with the Tribunal. The communication strategy is furthermore structured to accommodate diversity of gender, language, levels of education, and cultures, amongst other factors. In order to ensure effective implementation of the communications strategy, the Tribunal will utilize a broad range of communication tools optimally. These include amongst others, publications, annual reports, the production and distribution of communications material, internal communications, building of stakeholder relationships, electronic communication, social media, radio, television, Tribunal quarterly bulletin and website, consultative forums and working with organisations with similar mandates.

By communicating the Tribunal's core mandate to its stakeholders in a targeted manner, the communications function contributes to the broadening participation of previously marginalised groups in the economy. Outreach activities will cover all the provinces and also focus specifically in townships and rural areas. Business chambers and associations will also be targeted.

## **14. Anti-fraud and Corruption Policy**

In order to promote an anti-fraud culture, the Tribunal applies the following principles:

### **Principle 1: Zero-tolerance**

The Tribunal is committed to being an ethical and honest organisation and it is the policy of the Tribunal that fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature will not be tolerated.

### **Principle 2: Accountability**

It is the accountability of leadership and business unit heads to ensure that the control environment is adequate and effective to prevent or detect fraud incidents. All members of staff and Tribunal members are specifically responsible for the prevention and detection of fraud, corruption, theft, maladministration or any activities of a similar nature, within their areas of responsibility.

### **Principle 3: Duty to implement effective anti-fraud controls**

Appropriate prevention and detection controls will be implemented within the Tribunal. These include controls and checking mechanisms as prescribed in existing policies of government, procedures and other relevant prescripts to the activities of the Tribunal, and systems of internal control.

In respect of all reported incidents of fraud, business unit heads/ managers are required to immediately review, and where possible, improve the effectiveness of the controls which have been breached in order to prevent similar irregularities from taking place in future.

### **Principle 4: Duty to report and reporting mechanisms**

The Tribunal encourages staff members, stakeholders and members of the public who suspect fraud and wish to report it anonymously to do so by phoning the dedicated whistle blowing hotlines of government and that of the Tribunal due to be established. All calls to the Tribunal's hotline will be treated confidentially and the identity of persons lodging reports ("whistleblowers") will be protected.

### **Principle 5: Duty to protect whistleblowers**

The Tribunal acknowledges and abides by the Protected Disclosures Act as well as other legislation that seeks to protect whistleblowers and will protect all persons that report incidents of fraud from discrimination and maltreatment in the workplace.

### **Principle 6: Reporting to police and other relevant authorities**

The Tribunal will report fraud and/ or related misconduct, as applicable to the South African Police Services or other relevant authorities. Appropriate legal recourse to recover losses or damages arising from fraud and corruption will be taken without undue delay.

**Principle 7: Mandate to investigate fraud**

All incidences of fraud and corruption will be investigated and followed up by the application of all remedies available within the full extent of the law. The Chairperson of the Audit & Risk Committee of the Tribunal and/or the Tribunal Chairperson holds the mandate to ensure that investigations are facilitated and managed appropriately.

Internal staff, providers, and stakeholders will be expected to cooperate fully during any investigation. Any acts of non-cooperation will be addressed in line with the Tribunal's disciplinary procedures.

**Principle 8: Instituting disciplinary proceedings**

The Tribunal will ensure that disciplinary proceedings and other available remedies are exercised with minimal delay in the event that acts of fraud and corruption have been committed internally. Where an official is alleged to have committed an act of fraud, corruption, theft or maladministration, the respective line supervisor/ manager must institute disciplinary proceedings immediately in line with the disciplinary procedures of the Tribunal.

**Principle 9: Training and awareness**

Fraud awareness and specific anti-fraud and corruption training will be undertaken regularly to raise and maintain vigilance within the Tribunal.

**Principle 10: Fraud risk assessment**

The Tribunal will ensure that fraud risk is assessed regularly by the organisation and its business units as well as ensure that, during the design and implementation of new systems and processes, the relevant fraud risks have been considered.

## 15. Annexure A: Materiality and significance framework

### 1. Definitions

- **Accounting Authority:** The Chairperson of the Companies Tribunal
- **Executive Authority:** The Minister of Trade and Industry
- **PFMA:** The Public Finance Management Act (Act 1 of 1999, amended by Act 29 of 1999)
- **Treasury Regulations:** Public Finance Management Act, 1999, amendments of Treasury Regulations in Terms of Section 76 as published in Government Gazette No 23463 dated 25<sup>th</sup> May 2002.

### 2. Introduction

For purposes of material (sections 50(1), 55(2) and 66(1) of the Act) and significant (section 54(2) of the Act) the Accounting Authority must develop and agree a framework of acceptance levels of materiality and significance with the relevant Executive Authority in consultation with the external auditors.

### 3. Framework

PFMA Section	Quantitative (Amount)	Qualitative (Nature)
S50: Fiduciary duties of accounting authorities (PFMA Section 50)		
	Materiality figure for year ending March 2018 will be 0.60%	
(1) The accounting authority for a public entity must:		
(a) on request, disclose to the Executive Authority responsible for that public	Any fact discovered of which the amount exceeds the planning	1. Any time or event of which specific

PFMA Section	Quantitative (Amount)	Qualitative (Nature)
<p>entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the Executive Authority or that legislature;</p>	<p>materiality figure as calculated. (Listed above)</p>	<p>disclosure is required by law.</p> <p>2. Any fact discovered of which its omission or misstatement, in the Tribunal's opinion, could influence the decisions or actions of the Executive Authority or legislature.</p>
<p><b>S55: Annual report and financial statements (PFMA Section 55)</b></p>		
<p>(2) The annual report and financial statements referred to in subsection (1) (d) must:</p> <p>-</p>		
<p>(a) fairly present the state of affairs of the public entity, its business, its financial results, its performance against predetermined objectives and its financial position as at the end of the financial year concerned:</p> <p>(b) Include particulars of: -</p>	<p>Please note that this is presented as part of the annual report</p> <p>1. Losses through criminal conduct / any loss identified.</p>	<p>Please note that this is presented as part of the annual report</p>

PFMA Section	Quantitative (Amount)	Qualitative (Nature)
<p>(i) any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year:</p> <p>(ii) any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;</p> <p>(iii) any losses recovered or written off;</p> <p>(iv) any financial assistance received from the state and commitments made by the state on its behalf; and</p> <p>(v) any other matters that may be prescribed; and</p>	<p>2. Losses through irregular/fruitless/ wasteful expenditure.</p>	<p>Any identified loss through criminal conduct.</p>
<p><b>S66: Restrictions on borrowing, guarantees and other commitments (PFMA) Section 66</b></p>		
<p>(1) An Institution to which this Act applies may not borrow money or issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind that Institution or Revenue Fund to any future financial commitment, unless such borrowing, guarantee,</p>	<p>Not applicable</p>	<p>Not applicable</p>

PFMA Section	Quantitative (Amount)	Qualitative (Nature)
indemnity, security or other transaction: -		
<p>a. Is authorized by this Act ;</p> <p>b. in the case of public entities is also authorized by other legislation not in conflict with this Act</p> <p>c. and in the case of loans by a province or a provincial government business enterprise under the ownership and control of a provincial executive, is within the limits as set in terms of the Borrowing Powers of Provincial Government Act, 1996 (Act no 48 of 1996). (The Credit Act No 35 of 2005 does not give the Tribunal the mandate to enter into these transactions)</p>	<p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>	<p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p>
<b>S54: Information to be submitted by accounting authorities (PFMA Section 54)</b>		
2. Before a public entity concludes any of the following transaction, the accounting authority for the public entity must promptly and in writing inform the relevant treasury of the transaction and submit	Not applicable	Not applicable

PFMA Section	Quantitative (Amount)	Qualitative (Nature)
<p>relevant particulars of the transaction to its Executive Authority for approval of the transaction: -</p>		
<p>(a) participation in a significant partnership, trust, unincorporated joint venture or similar arrangement;</p>	<p>Not applicable</p>	<p>Not applicable</p>
<p>(b) Acquisition or disposal of a significant shareholding in a company;</p>	<p>Not applicable</p>	<p>Any asset that would increase or decrease the overall operational functions of the Tribunal, outside of the approved strategic plan and budget.</p>
<p>(c) Acquisition or disposal of a significant asset;</p>	<p>Not applicable</p>	
<p>(d) Commencement or cessation of a significant business activity.</p>		<p>Not applicable</p>