

SUMMARY: CASSIM NO v RAMAGALE HOLDINGS (PTY) LTD

Section 346 (4A) (b) of the Companies Act 61 of 1973 requires an affidavit by the person who furnished a copy of an application for the winding up, whether finally or provisionally, of a company to the respondent company itself, the employees, any trade union representing employees, and the SA Revenue Service (SARS) in accordance with section 346 (4A) (a) (i) to (iv). An affidavit by a person who merely refers to returns of service issued by others or acknowledgements of receipt by one of the parties is not sufficient.

Non-compliance in respect of furnishing a copy to the company may be condoned in terms of section 346 (4A) (a) (iv) but not in respect of furnishing copies to the employees, trade unions or SARS. The provisions are therefore peremptory in respect of a service affidavit in respect of employees, trade unions and SARS.

Non-compliance in respect of furnishing a copy to the respondent company causes no problems in practice as proceedings are initiated by service by the Sheriff.