

NOTICE 1664 OF 2009

DEPARTMENT OF TRADE AND INDUSTRY

COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)

**COMPANIES REGULATIONS PURSUANT TO THE
COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)**

I, Dr Rob Davies, Minister of Trade and Industry, pursuant to the signing of the Companies Act, 2008 by the President, hereby give notice in terms of section 223 of the Companies Act, 2008, as follows:

1. The Companies Regulations, 2010 are hereby published for public comment with effect from date of publication to 01 March 2010.
2. The Regulations provides for implementing Chapters of the Companies Act such as, Accountability and Transparency, Business Rescue, Par Value Shares, Social and Ethics Committee, Company Accounting Records, Financial Reporting Standards, Companies to be audited, Independent Reviews (Lesser standard than the audit) and Annual Returns and Discretionary Audit.
3. Members of the public are hereby requested to send their comments to Mr. MacDonald Netshitenzhe at MNetshitenzhe@thedti.gov.za or Fax (012) 394 2506

DR ROB DAVIES, MP

MINISTER OF TRADE AND INDUSTRY

DATE:...../...../ 2009

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COMPANIES REGULATIONS, 2010

Chapter 1 - General Provisions

Part A – Interpretation

1. Short title

Authority: s. 223 (1)(d)(ii)

These Regulations may be cited as the *Companies Regulations, 2010*.

2. Definitions

Authority: s. 223 (1)(d)(ii)

In these Regulations, unless the context indicates otherwise -

- (a) “certified copy” means a copy of a document certified by a Commissioner of Oaths, or electronically certified in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (b) “High Court Rules” means the Rules Regulating the Conduct of the Several Provincial and Local Divisions of the High Court of South Africa, published by Government Notice R48 in Government Gazette 999 of 12 January, 1965, as amended from time to time;
- (c) “initiating document”, depending on the context, means –
 - (i) an application submitted to a regulatory agency;
 - (ii) a complaint submitted to the Commission or the Panel;
 - (iii) a Complaint Referral by the Commission to the Tribunal; or
 - (iv) a Complaint referral directly by a complainant to the Tribunal;
- (d) “previous Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (e) “principal office” means the principal location within the Republic, as determined in terms of Regulation 176 (1), at which a regulatory agency conducts its operations and is accessible to the public;
- (f) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (g) “publish a notice” means to publicize information in accordance with Regulation 6;
- (h) “recording officer”, when used in relation to a particular matter, means either –

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Regulation 3

- (i) the officer of the Commission, Panel, Tribunal or the Board, as the case may be, appointed or designated in terms of Regulation 178; or
- (ii) any assistant or acting recording officer having responsibility for the particular matter;
- (i) "Regulation" includes any Table or Form included within or referred to in a Regulation;
- (j) "regulatory agency" means the Commission, the Panel, the Tribunal or the Board;
- (k) "senior officer" means, in the case of -
 - (i) the Commission, the Commissioner;
 - (ii) the Panel, the chairperson of the Panel, designated in terms of section 198;
 - (iii) the Tribunal, the chairperson the Tribunal, appointed in terms of section 194; or
 - (iv) the Board, the chairperson of the Board, appointed in terms of Regulation 130;
- (l) "the Act" means the Companies Act, 2008 (Act No. 71 of 2008), as amended from time to time; and
- (m) "the Board" means the Business Rescue Practices Regulatory Board" established by Regulation 129.

3. Interpretation

Authority: s. 223 (1)(d)(ii)

- (1) In these Regulations -
 - (a) a reference to a section by number refers to the corresponding section of the Act;
 - (b) a reference to a Regulation by number refers to the corresponding provision of these Regulations; and
 - (c) a reference to a sub-regulation or other partial Regulation by number refers to the corresponding clause of the Regulation in which the reference appears.
- (2) A word or expression that is defined in section 1, or elsewhere in the Act to the extent applicable in particular circumstances, bears the same meaning in these Regulations as in the Act.

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Regulation 3

(3) If, with respect to a decision to be made by a juristic person other than a company in any particular matter -

- (a) a provision of the Act requires that the matter be determined by special resolution of that juristic person; and
- (b) neither the relevant law in terms of which that juristic person was incorporated, or the constituting document of that juristic person, defines or contemplates a special resolution

that provision of the Act must be regarded as requiring approval of that matter by the highest deliberative standard contemplated by the relevant law applicable to, and the constituting documents of, that juristic person.

(4) To the extent that the content or effect of any particular provision of a company's Memorandum of Incorporation -

- (a) is required of the company in terms of any applicable public regulation, or the listing requirements of an exchange; and
- (b) incidentally has the effect of negating, restricting, limiting, qualifying, extending or otherwise altering the substance or effect of an unalterable provision of the Act,

that provision of the company's Memorandum of Incorporation must not be construed as being contrary to section 15 (1), read with the definition of "unalterable provision" in section 1.

(5) If, as a consequence of the coming into effect of the Act and the repeal of the previous Act, a conflict, dispute or doubt arises within 18 months after the effective date concerning the particular manner or form in which, or time by which, a pre-existing company is required to -

- (a) prepare its annual financial statements, convene an annual general meeting, provide copies of its annual financial statements, any other document or any notice to its shareholders; or
- (b) file any particular document with the Commission; or
- (c) take any other particular action required in terms of the Act or its Memorandum of Incorporation,

the company may apply to the Tribunal for directions, and a member of the Tribunal may make an administrative order that is appropriate and reasonable in the circumstances.

(6) For the purposes of the Act and these regulations, three or more persons are to be regarded as inter-related if any two of them are related, and one of those persons is related to the third, and so forth in an unbroken sequence.

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

Regulation 4

Part B – Guidelines, Practice Notes, Forms, Notices and other documents

4. Issuing and Status of Practice Notes and Guidelines

Authority: s. 223 (1)(b) and (c)

(1) In this Regulation,

- (a) “Guideline” means a document setting out recommended procedures, standards or forms reflecting a regulatory agency’s advice as to what constitutes best practice on a matter; and
- (b) “Practice Note” means a document setting out –
 - (i) the procedure that will be followed by a regulatory agency; or
 - (ii) a procedure to be followed when dealing with a regulatory agency, or
 - (iii) a regulatory agency’s interpretation of, or intended manner of applying, a provision of the Act or these Regulations

in a respect to a matter within the authority of that regulatory agency.

(2) The senior officer of a regulatory agency may -

- (a) issue a Guideline at any time by –
 - (i) publishing a notice of the Guideline to the general public in any generally circulated newspaper, on the regulatory agency’s web site, or but any similar means of providing information to the public generally; and
 - (ii) making a printed or electronic copy of the Guideline freely available to any person upon request; or
- (b) issue a Practice Note at any time by publishing it in the Gazette, and may amend or withdraw any such Practice Note at any time by subsequent notice in the Gazette.

- (3) A Guideline or Practice Note must be consistent with the Act and these Regulations.
- (4) A Guideline issued in terms of the Act or this regulation is not binding on the regulatory agency that issued it, or on any other person, regulatory authority, tribunal or court.
- (5) A Practice Note issued in terms of the Act or this regulation is binding on the regulatory authority that issued it until it is amended or withdrawn, as contemplated in sub-regulation (2)(b), but a practice note issued by –
 - (a) the Commission is not binding on the Tribunal or a court; or

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

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- (b) any other regulatory agency is not binding on a court.

5. Forms and filing requirements

Authority: s. 223 (1)(b) and (d)(i)

- (1) Whenever a document is required –

- (a) in terms of a section of the Act or a provision of these Regulations listed in column 1 of Table CR 1; and
- (b) for a purpose listed in column 2 of that Table,

the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that Table, and must be produced, delivered, or filed as the case may be subject to any conditions or requirements listed opposite that section number in column 4 of that Table.

- (2) If a regulatory authority has reasonable grounds for uncertainty whether a copy of a document to be filed is in fact unaltered, as contemplated in section 6 (7), the regulatory authority may require the person seeking to file that document to provide a certified copy of the document.

6. Publishing of notices

Except as specifically required elsewhere in these regulations, a regulatory agency or person required to publish a notice in terms of the Act or these regulations must –

- (a) place an advertisement, setting out the notice, in a daily newspaper circulating to the general public within each province in which the relevant company routinely conducts its business activities; and
- (b) if the publication is required by a company, it must conspicuously post a copy of the notice at its principal places of conducting its business activities; and
- (c) if the publication is required by regulatory agency or a company, it must conspicuously post a copy of the notice -
- (i) on its website, if it has one; and
- (ii) on SENS, if it is a listed company.

7. Notice of availability of documents

Authority: s. 6 (11)(b)(ii)

- (1) A notice of the availability of a document, record or statement, as contemplated in section 6 (11)(b), must -

- (a) be in writing and delivered to each intended recipient of the document, record or statement either;

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Regulation 8

- (i) in paper form at the intended recipient's last known delivery address; or
 - (ii) in electronic form at their last known electronic mail address; and
 - (b) set out clearly -
 - (i) the title of the document, record or statement the availability of which is being advertised;
 - (ii) the extent of the period during which the document, record or statement will remain available;
 - (iii) the means by which the the document, record or statement may be acquired by a recipient of the notice; and
 - (c) include a statement that succinctly summarizes the purpose of the document, record or statement.
- (2) A document, record or statement the availability of which is being advertised –
- (a) must be made available to intended recipients in paper copy, or in a printed version of an electronic original produced by or on behalf of the company on demand by an intended recipient; and
 - (b) may in addition be made available to intended recipients to request and obtain by electronic transmission in a manner and form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

8. Delivery of documents

Authority: s. 223 (1)(b) and (d)(i)

- (1) A notice or document to be delivered for any purpose contemplated in the Act or these Regulations may be delivered in any manner set out in Table CR 3.
- (2) Subject to sub-regulation (4), a document delivered by a method listed in the second column of Table CR 3 will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table.
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these Regulations,
 - (a) if a regulatory agency is required to deliver the document, the recording officer may apply to the High Court for an order of substituted service; and
 - (b) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Regulation 176 (3), if the date and time for the delivery of a document referred to in Table CR 3 to a regulatory agency is outside of the office hours of that

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Regulation 8

regulatory agency as set out in Regulation 176 (2) that document will be deemed to have been delivered on the next business day.

- (5) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -
- (a) The name, address, and telephone number of the sender;
 - (b) The name of the person to whom it is addressed, and the name of that person's attorney, if it is being sent to the attorney for a person;
 - (c) The date and time of the transmission;
 - (d) The total number of pages sent, including the cover page; and
 - (e) The name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 9

Chapter 2 - Formation, Administration and Dissolution of Companies

Part A – Reservation and Registration of Company Names

9. Company names

Authority: s. 223 (1)(d)(ii)

(1) In this regulation -

- (a) “company concerned”, when used in relation to –
 - (i) an application to reserve a name –
 - (aa) means an entity that is contemplated, but not yet incorporated; or
 - (bb) in the case of an application filed by or in respect of an existing company contemplating changing its name, means that company;
 - (ii) a notice of incorporation, means the company being incorporated; or
 - (iii) a notice of Amendment of a Memorandum of Incorporation, means the company filing the notice; and
- (b) “proposed company name” means a name that appears on -
 - (i) an application for name reservation; or
 - (ii) either
 - (aa) a Notice of Incorporation; or
 - (bb) a Notice of Amendment of a company's Memorandum of Incorporation

irrespective whether the name has been reserved before the filing of any such notice.

- (2) Irrespective of the language of any words used in a proposed company name –
 - (a) every word comprising part of the name must be expressed using the alphabet that is commonly used for writing in any one of the official languages of the Republic; and
 - (b) every number forming part of the name must be expressed either in words or in Arabic or Roman numerals.
- (3) If a proposed company name contains any word or words in any language that is not an official language of the Republic, the application or notice filed to reserve or use that name must include either –

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 10

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- (a) a certified translation of that word, or those words, into an official language of the Republic; or
 - (b) a declaration that the word falls, or the words fall, within the category of words contemplated in sub-regulation (4).
- (4) If a proposed company name contains any word, or combination of words, in any language that constitute -
- (a) a registered trade mark; or
 - (b) a mark in respect of which an application has been filed in the Republic for registration as a trade mark; or
 - (c) a well known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993)

the application or notice filed to reserve or use that name must include satisfactory evidence that the applicant or the company to use that name is entitled to use that word or combination of words.

- (5) If a proposed company name -
- (a) is similar to the name of another company, close corporation or co-operative, and is claimed to be justifiable on the grounds that –
 - (i) the company to use that name; and
 - (ii) the other company, close corporation or co-operative, as the case may be,

are both part of a common group of companies; or
 - (b) falls within any category of names restricted in terms of section 11 (2) (b), and is claimed to be justifiable on the grounds that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by, endorsed by, owned by, operated by, conducted by, or enjoys the patronage of, as the case may be, a person or entity contemplated in that section,

the application or notice to use that name must include satisfactory evidence supporting that claim.

Authority: s. 11 (4)

- (6) In addition to the symbols set out in section 11(1)(a)(ii), the name of a company may include the following symbols: @, - .

10. Reservation of company names

Authority: s. 12

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 10

- (1) An application to reserve a name in terms of section 12 (1) must be made in Form CoR 10.1, and must be accompanied by -
 - (a) the fee set out in Table CR 2; and
 - (b) any relevant documentation or evidence required in terms of Regulation 9.
- (2) An application to extend the reservation of a name, as contemplated in section 12 (4), must be made in Form CoR 10.2, and must be accompanied by -
 - (a) the fee set out in Table CR 2B;
 - (b) a statement by the applicant setting out the reasons why the name has not been used within the time that it has been reserved, and why it is anticipated that the name will be used within the period of the extension; and
 - (c) in the case of a name in respect of which satisfactory evidence of any facts was required in terms of Regulation 9 when the name was first reserved, further satisfactory evidence that the relevant circumstances have not altered.
- (3) The Commission must issue to the applicant –
 - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9, before determining whether to accept the application.
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application to reserve a name, or extend the reservation of a name; or
 - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if -
 - (i) the form of the name does not satisfy any requirements set out in section 11, or Regulation 9 (1); or
 - (ii) use of that name by the applicant is prohibited in terms of section 12 (2).
- (4) If the Commission has accepted the reservation of a name that the Commission considers may be contestable on any ground contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue–
 - (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7, to the South African Human Rights Commission and to the applicant if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

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Regulation 11

11. Defensive reservation of names*Authority: s. 12 (9)*

- (1) An application for a defensive reservation of a name must be –
 - (a) made in Form CoR 11.1; and
 - (b) accompanied by –
 - (i) the fee set out in Table CR 2B; and
 - (ii) evidence that the applicant has a direct and material interest in the name.
- (2) An application to renew a defensive reservation of a name must be –
 - (a) made in Form CoR 11.2; and
 - (b) must be accompanied by –
 - (i) the fee set out in Table CR 2B; and
 - (ii) evidence that the applicant continues to have a direct and material interest in the name.
- (3) A defensive name reservation may be transferred to another person, in accordance with Regulation 12.
- (4) The Commission must issue to the applicant –
 - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of sub-regulation (1)(b)(ii) or (2)(b)(ii) before determining whether to accept the application;
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application for defensive reservation of a name, or to renew the defensive reservation of a name; or
 - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if –
 - (i) the form of the name does not satisfy the requirements of section 11, or Regulation 9 (1); or
 - (ii) the use of that name by the applicant is prohibited in terms of section 12 (2).

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Regulation 12-r13

- (5) If the Commission has accepted the defensive reservation of a name that may be contestable on any grounds contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue –
- (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7 to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

12. Transfer of reserved names

Authority s. 12 (5)

- (1) An application to transfer the reservation, or defensive reservation, of a name to another person must –
- (a) be made in Form CoR 12.1, and accompanied by the fee set out in Table CR 2B; and
 - (b) in the case of a -
 - (i) a name reservation in respect of which satisfactory evidence of any facts was required in terms of Regulation 9, must be accompanied by satisfactory evidence of the comparable facts in relation to the transferee; or
 - (ii) defensive reservation, must be accompanied by satisfactory evidence that the transferee has a direct and material interest in the name.
- (2) The Commission must issue to the applicant –
- (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9 or sub-regulation (1)(b)(ii); or
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted the Notice of Transfer of the name; or
 - (c) a Notice of Refusal of a Name Transfer in Form CoR 12.2 if the use of that name by the transferee is prohibited on the grounds that the evidence of matters contemplated in Regulation 9 or sub-regulation (1)(b)(ii) is unsatisfactory.

13. Disputes concerning rejected applications

Authority s. 156 (b)

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Regulation 14

- (1) A person to whom a Notice of Refusal to reserve a name, in Form CoR 10.6, or a Notice of Refusal of a Name Transfer, in Form CoR 12.2, is delivered in terms of Regulation 10, 11 or 12, may apply to the Tribunal in Form CTR 147 for a determination whether the name satisfies the requirements of section 11, or satisfies the requirements for transfer, as the case may be.
- (2) An application in terms of sub-regulation (1) may be made -
 - (a) within 20 business days after the date of a notice contemplated in sub-regulation (1); or
 - (b) on a later date, if so permitted by the Tribunal, on good cause shown.
- (3) After considering an application made in terms of sub-regulation (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Tribunal -
 - (a) must make a determination whether that name satisfies the requirements of section 11, or the requirements for a transfer of name, as the case may be; and
 - (b) may make an administrative order –
 - (i) confirming or varying, in whole or in part, the notice issued by the Commission; or
 - (ii) directing the Commission to -
 - (aa) reserve a name for the applicant in terms of section 12;
 - (bb) transfer a reserved name.
- (4) Within 20 business days after receiving a notice or a decision issued by the Tribunal in terms of this regulation, an incorporator of a company, a company, a person who received a notice contemplated in sub-regulation (1), an applicant under sub-regulation (1) or any other person with an interest in the name or proposed name that is the subject of the application, as the case may be, may apply to a court to review the decision.

14. Abuse of name reservation system*Authority: s. 12 (6)*

- (1) A notice contemplated in section 12 (6), must be issued by the Commission in form CoR 14, and must –
 - (a) specify clearly the purpose of the notice in terms of the items listed in section 12 (6)(a) to (d); and
 - (b) set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.

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Regulation 14

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- (2) If a person who has received a notice in form CoR 14 to show cause why a name should be reserved, continue to be reserved or why a reservation should be transferred, as contemplated in section 12 (6)(a) –
- (a) fails to respond to that notice within 40 business days after receiving it, the Commission must issue a notice in –
- (i) form CoR 10.6, rejecting the application to reserve the name, or
- (ii) A further form CoR 14, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.
- (b) provides information to the Commission within 40 business days after receiving it, the Commission, after considering that information, must issue either –
- (i) a notice in form CoR 10.5 accepting the reservation, extension or transfer as the case may be; or
- (ii) a further notice in form CoR 14, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.
- (3) Regulation 13, read with the changes required by the context, applies with respect to any notice in form CoR 14 issued in terms of this regulation, other than a notice requiring a party to show cause, as contemplated in section 12 (6)(a).

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Regulation 15

Part B – Incorporation and Legal Status of Companies**15. Notice of Incorporation***Authority: s. 13 (2), read with s. 223 (1)(d)(i)*

- (1) A Notice of Incorporation required in terms of section 13 must be filed in form CoR 15.1 and -
 - (a) must be accompanied by -
 - (i) the Memorandum of Incorporation of the company; and
 - (ii) the fee set out in Table CR 2B, subject to sub-regulation (2) and (4); and
 - (b) must stipulate whether the company's name will be -
 - (i) its registration number, as contemplated in section 11 (1)(b), in which case the applicable spaces for the name to be entered on form CoR 15.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission upon assignment of the registration number;
 - (ii) a name that has been reserved for use in terms of the Act, and which the incorporators are entitled to use, in which case the reservation number must be set out on form CoR 15.1; or
 - (iii) a name that has not been reserved in advance, in which case -
 - (aa) the applicable spaces for the name to be entered on form CoR 15.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission in accordance with sub-regulation (2);
 - (bb) the incorporators may include up to four alternative names on the Notice of Incorporation, listed in order of preference; and
 - (cc) Regulation 9 and 10, read with the changes required by the context, apply with respect to each name listed on the notice.
- (2) If the Notice of Incorporation indicates that the company is to be known by its registration number, or by a name that has been reserved in advance, the Commission must reduce the filing fee for the Notice of Incorporation by an amount equivalent to the fee for an application for name reservation.
- (3) If the Notice of Incorporation indicates that the company is to be known by a name that has not been reserved in advance -
 - (a) the Commission must consider each name entered on form CoR 15.1 in the listed order of preference, and must assign to the company as its name -

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Regulation 16

- (i) the first of those names that proves to be acceptable in terms of the Act, if any; or
- (ii) the registration number, in the manner contemplated in section 14 (2)(b), if none of the listed names is acceptable; and
- (b) sections 11 and 12 and Regulations 9 and 10, each read with the changes required by the context, apply to the consideration of any such name by the Commission, as if the Commission were considering an application to reserve that name.
- (4) If, in terms of sub-regulation (3), the Commission is required to consider more than one name, the Commission may assess the company a surcharge in addition to the filing fee for the Notice of Incorporation, equivalent to the fee required on an application for reservation of a name, for each such additional name required to be considered.
- (5) The Commission may reject a Notice of Incorporation in terms of section 13 (4) by issuing a notice to the incorporators in form CoR 15.2 and returning to them any documents or other material filed with the Notice of Incorporation.
- (6) Regulation 13, read with the changes required by the context, applies with respect to any notice in form CoR 15.2 issued in terms of this regulation, or any notice issued by the Commission with respect to the name of the company, as contemplated in sub-regulation (3)(b) or in section 14 (2) and (3), read with sections 11 and 12, and regulations 9 and 10.
- (7) The Registration Certificate issued by the Commission in terms of section 14 (1)(b) must be in form CoR 15.3.

16. Memorandum of incorporation

Authority: s. 13 (1)(1) and s. 223 (1)(d)(i)

- (1) The Memorandum of Incorporation of a company in the standard form contemplated in section 13 (1)(a)(i) must be in either form CoR 16.1A or CoR 16.1B.
- (2) At any time after the incorporation of a company, the company may substitute its Memorandum of Incorporation in standard form CoR 16.1A, with a Memorandum of Incorporation in standard form CoR 16.1B by filing, without charge –
 - (a) A Notice of Amendment in form CoR 16.2;
 - (b) A copy of the completed Memorandum of Incorporation in form CoR 16.1B; and
 - (c) a copy of a special resolution of the company approving the new form of Memorandum of Incorporation.

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Regulation 16

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- (3) Within 5 business days after an amendment to a company's Memorandum of Incorporation has been effected in any other manner contemplated in section 16 (1), the company must file a Notice of Amendment in form CoR 16.2, together with –
- (a) the relevant documents required by section 16 (7); and
 - (b) the fee set out in Table CR 2B, subject to any fee waiver provided for in the Act or these regulations.
- (4) If an amendment to a company's Memorandum of Incorporation includes an amendment to the name of the company, the date and time at which the Commission will have accepted the notice of amendment, as contemplated in section 16 (9), is the date and time at which the Commission issues a certificate of registration in the amended name of that company.
- (5) If an amendment to the Memorandum of Incorporation of a personal liability company has the effect of transforming that company into any other category of company, the Notice of Amendment must include satisfactory evidence that the company has taken reasonable steps to give at least 10 business days notice of the filing of the notice of amendment, and of its effect, to –
- (a) any professional or industry regulatory authority that has jurisdiction over the business activities carried on by the company; and
 - (b) all persons who –
 - (i) in their dealings with the company, may reasonably be considered to have acted in reliance upon the joint and several liability of the directors for the debts and liabilities of the company; or
 - (ii) may be adversely affected if the joint and several liability of the directors for the debts and liabilities of the company is terminated as a consequence of the amendment to the Notice of Incorporation.
- (6) A person who receives, or is entitled to receive, a notice in terms of sub-regulation (5) may apply to the Tribunal in form CTR 143 for an administrative order sufficient to protect the interests of that person.
- (7) Within 5 business days after publishing a notice of alteration of its Memorandum of Incorporation, as contemplated in section 17 (1)(a), the company must file a Notice of Alteration in form CoR 16.3.
- (8) A filed translation of a company's Memorandum of Incorporation must be accompanied by form CoR 16.4, which must include the sworn statement required by section 17 (4).
- (9) A consolidated revision of a company's Memorandum of Incorporation must be accompanied by form CoR 16.5, which must include a sworn statement, or a statement by an attorney or notary, as required by section 17 (6).

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Regulation 17-r18

- (10) A notice by the Commission requiring a company to file a consolidated revision of its Memorandum of Incorporation must be in form CoR 16.6.
- (11) If –
- (a) any shareholders of a pre-existing company have entered into an agreement of the type contemplated in section 15 (7); and
 - (b) any provision of that agreement is inconsistent with the company's Memorandum of Incorporation or this Act; and
 - (c) that agreement is in effect immediately before the effective date; and
 - (d) the company has filed a Notice of Shareholder Agreement in form CoR 16.7 within 20 business days after the effective date,

the provisions of Item 4 (2), (3) and (4) of Schedule 5 of the Act, read with the changes required by the context, apply with respect to any such provision of that agreement in relation to the Memorandum of Incorporation, and the Act.

17. Rules of a company

Authority: s. 15 (3)(b), read with s 223

- (1) Rules of a company contemplated in section 15 (3) must be filed with form CoR 17.1 within 20 business days after being published by the company in terms of section 15 (3)(a).
- (2) Within 5 business days after any rules of a company have been put to a ratification vote in terms of section 15 (4), the company must file a Notice of Result of Ratification Vote in form CoR 17.2 indicating clearly whether the rules have been ratified or rejected.
- (3) Within 5 business days after any rules of a company have been amended, altered or repealed the company must file a Notice of Amendment, Alteration or Repeal of Company Rules in form CoR 17.3 indicating clearly the extent and effect of the change.
- (4) Any failure to ratify the rules of a company does not affect the validity of anything done in terms of those rules during the period that they had interim effect as provided in section 15 (4)(c)(i).

18. Validity of company actions

Authority: s 223(1)(d)(ii)

Proceedings contemplated in section 20 (4) or (5) must be commenced in the High Court, in accordance with the High Court Rules.

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Regulation 19-r21

19. Conversion of Close Corporations*Authority: s 223(1)(d)(ii)*

- (1) A Notice of Conversion of a close corporation must be filed in form CoR 19, and must be accompanied by –
 - (a) a written statement of consent signed by members of the corporation holding, in aggregate, at least 75% of the members' interests in the corporation;
 - (b) a Memorandum of Incorporation; and
 - (c) the fee set out in Table CR 2B.
- (2) For greater certainty, the Commission must regard -
 - (a) the written and signed consents contemplated in sub-regulation (1)(a) as satisfying the requirement set out in Item 1 (2)(a) of Schedule 2 of the Act; and
 - (b) the Memorandum of Incorporation contemplated in sub-regulation (1)(b) as satisfying the requirement set out in Item 1 (2)(b) of Schedule 2 of the Act.
- (3) Regulation 15, read with the changes required by the context, applies to the filing and consideration of a Notice of Conversion of a close corporation.

20. Reckless trading*Authority: s. 22 and 223 (1)(d)(ii)*

- (1) The Commission may issue a show cause notice contemplated in section 22 (2), in respect of any conduct mentioned in section 22(1)(a), at any time, in form CoR 20.1, which must clearly set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.
- (2) If a person who has received a notice in form CoR 20.1 provides information to the Commission within 20 business days after receiving the notice, the Commission, after considering that information, must issue either -
 - (a) a notice in form CoR 20.2 accepting the information, and confirming the company's right to continue carrying on its business activities; or
 - (b) a compliance notice, as contemplated in section 22 (3).

21. Trading in insolvent circumstances*Authority: s.22 and 223 (1)(d)(ii)*

- (1) If, at any particular time, a company is trading in circumstances in which its liabilities exceed its assets, the company must file a notice to that effect in form CoR 21.1, and thereafter file quarterly renewals of that notice in form CoR 21.2, until such time as the company's assets equal or exceed its liabilities.

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Regulation 21

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- (2) Subject to sub-regulations (3) to (5), Regulation 20, read with the changes required by the context, applies with respect to conduct contemplated in section 22 (1)(b).
- (3) In the exercise of its discretion, in terms of section 22 (2), in respect of conduct contemplated in section 22 (1)(b), the Commission –
- (a) may not issue a notice in form CoR 20.1 as contemplated in that subsection if –
- (i) the amount by which the company's liabilities exceed its assets is less than or equal to the total of all amounts owed by the company–
- (aa) to its shareholders in terms of any shareholder loans or similar arrangements; or
- (bb) to any other person in terms of a secured loan, secured credit facility or similar arrangement; and
- (ii) it is reasonable in the circumstances to expect that the company will be able to meet its obligations as they fall due and payable; and
- (b) may otherwise issue a notice in form CoR 20.1 as contemplated in that section only if it is reasonable and justifiable to prevent the company from operating in the circumstances, having regard to, among other things, the following factors:
- (i) The potential for the company to trade out of insolvency;
- (ii) The extent to which the company's liabilities are –
- (aa) in terms of any state sponsored economic development or economic empowerment program, scheme or policy; or
- (bb) in the form of obligations to, or are guaranteed by, the state or a state owned entity.
- (4) The Commission must not refer an offence to the National Prosecuting Authority for prosecution of a company in terms of section 22 (1)(b), or for prosecution of any person in terms of section 214 (1)(c)(i) read with section 22 (1)(b), unless –
- (a) the Commission has first issued –
- (i) a notice in form CoR 20.1, in terms of section 22 (2) and sub-regulation (3) to the relevant company; and
- (ii) a compliance notice in terms of section 22 (3) to the relevant company; and
- (b) the company has failed to comply with the compliance notice contemplated in paragraph (a)(ii).

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Regulation 21

(5) The Commission may not refer an offence to the National Prosecuting Authority for prosecution of a company in terms of both –

- (a) section 22 (1)(b), for trading in insolvent circumstances; and
- (b) section 214 (3) for failure to satisfy a compliance notice issued in terms of section 22 (3)

arising out of the same circumstances.

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Regulation 22-r24

Part C – Transparency, accountability and integrity of companies

22. External Companies

Authority: s. 23

- (1) An external company must register by filing a notice in form CoR 22.1, which must be accompanied by –
 - (a) the filing fee set out in Table CR 2B;
 - (b) a certified copy of the certificate of registration or comparable document issued by the jurisdiction in which the company was incorporated; and
 - (c) a statement setting out –
 - (i) the address of its principal office outside the Republic; and
 - (ii) the names of its directors at the time that it files form CoR 22.1;
 - (d) the address of its principal office in the Republic, as required by section 23 (3)(b)(i)(bb); and
 - (e) the name and address of any person within the Republic who has undertaken to accept service of documents on behalf of the external company.
- (2) The Commission must issue a registration certificate to each external company, in form CoR 22.2.

23. Registered office of company

Authority: s 23

A company or external company must notify the Commission of a change in its registered office by filing form CoR 23, indicating the effective date of the change, which must be a date after the date on which the notice is filed.

24. Company records

Authority: s. 24, read with 223(1)(d)(ii)

- (1) In addition to the requirements set out in section 24 (1)(b), a company must retain the following records indefinitely:
 - (a) its Memorandum of Incorporation, as amended from time to time;
 - (b) its Registration Certificate;
 - (c) its Register of Directors, subject to Regulation 24 (2); and
 - (d) its securities register, subject to Regulation 36 (6).

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Regulation 25-r26

- (2) A company must notify the Commission of a change in the location of any company records that are no longer located at its registered office by filing form CoR 24, indicating the effective date of the change, which must be a date after the date on which the notice is filed.

25. Information to be kept concerning directors

Authority: s 24(5) and s 223 (1)(d)(ii)

- (1) In addition to the information required by section 24 (5), a company's record of directors must include, with respect to each director of the company –
- (a) the name and registration number of any company of which a person related to that director is a director or prescribed officer;
 - (b) the address for service for that director; and
 - (c) in the case of a company that is required to have an audit committee, the professional qualifications, if any, and previous experience of the director.
- (2) To give effect to the requirements set out in section 24 (3)(b), at any particular time, the record of directors of a company must include –
- (a) with respect to each current director at that particular time, all of the information required in terms of section 24 (5) and sub-regulation (1); and
 - (b) with respect to any person who had been a director of the company at any time within the immediately preceding 7 years, but who is no longer a director of the company at that particular time, the information compiled in terms of section 24 (5) and sub-regulation (1), as of the date that person ceased to be a director.

26. Access to company information

Authority: s. 26 (5) and s. 223 (1)(d)(ii)

- (1) The right of access to the 'register of members' and 'register of directors' set out in section 26 (3) applies –
- (a) in the case of a profit company, to —
 - (i) its securities register, in the manner contemplated in section 26 (1)(a), read with section 24 (4)(a) and section 50;
 - (ii) its register of directors in the manner contemplated in section 26 (1)(a), read with section 24 (3)(b) and Regulation 25; and
 - (iii) its register of secretaries and auditors, if applicable, in the manner contemplated in section 26 (1)(a), read with section 24 (4)(b) and section 85; and

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Regulation 26

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- (b) in the case of a non-profit company to –
- (i) its register of members, required by Item 1 (9) of Schedule 1, if it has members; and
 - (ii) its register of directors in the manner contemplated in section 26 (1)(a), read with section 24 (3)(b) and Regulation 25.
- (2) Any right of access of any person to any information contemplated in section 26 or in this regulation may be exercised only in accordance with -
- (a) the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
 - (b) the provisions of section 26 (1)(c)(i); and
 - (c) sub-regulations (4) to (6).
- (3) A right of access to any record held by a company is not perfected until –
- (a) a request to exercise that right has been made to the company in terms of sub-regulation (4); and
 - (b) the right of access to the information has been confirmed in accordance with the Promotion of Access to Information Act, 2000.
- (4) A person seeking to exercise a right of access to any record held by a company must make a written request, as contemplated in section 26 (1)(c), by delivering to the company –
- (a) a completed Request for Access to Information in Form CoR 26; and
 - (b) any further documents or other material required in terms of the Promotion of Access to Information Act, 2000.
- (5) A perfected right of access to any information held by a company may be exercised only during the company's normal business hours.
- (6) A company may not charge a fee to a shareholder or, in the case of non-profit company, a member, of the company to inspect or copy a record contemplated in section 26 (3), read with sub-regulation (2).

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Regulation 27

27. Company accounting records

Authority: s. 27 and 28

- (1) A company or external company must notify the Commission of a change in its financial year end by filing Form CoR 27.
- (2) A company must keep accounting records in an official language of the Republic, as necessary to provide an adequate information base to -
 - (a) enable the company to satisfy all reporting requirements applicable to it, as set out -
 - (i) in section 28 (1) read with section 29 (1);
 - (ii) in terms of any other law; and
 - (iii) any agreement to which the company is a party; and
 - (b) provide for the proper conduct of an audit, or independent review of its annual financial statements, as applicable for the particular company.
- (3) Without limiting the generality of sub-regulation (2), the accounting records of a company must include -
 - (a) a register of the company's assets and liabilities including, but not limited to, -
 - (i) a register of the company's non-current assets showing for each such asset -
 - (aa) the date the company acquired it, and the acquisition cost;
 - (bb) the date the company revalued it, if applicable, and the amount of the revaluation and, if it was revalued after the Act took effect, the basis of, and reason for, the revaluation;
 - (cc) the date the company disposed of it, once it has been disposed, and the value of the consideration received for it, and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred; and
 - (dd) a register of any loan by the company to a shareholder, director, prescribed officer or employee of the company, or to a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment; and
 - (ii) A record of any property held by the company -
 - (aa) in a fiduciary capacity; or

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Regulation 27

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- (bb) in any capacity or manner contemplated in section 65 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008); and
 - (iii) A record of all liabilities and obligations of the company including, but not limited to -
 - (aa) a register of any loan to the company from a shareholder, director, prescribed officer or employee of the company, or from a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment;
 - (bb) a register of any guarantee granted by the company in respect of an obligation to a third party incurred by a shareholder, director, prescribed officer or employee of the company, or by a person related to any of them, including the amount guaranteed, the interest rate, the terms of re-payment, and the circumstances in which the company may be called upon to honour the guarantee;
 - (cc) a register of contractual obligations due to be performed in the future, recording for each such obligation the date on which it was undertaken, the person to whom the obligation is owed, the estimated cost of discharging the obligation and the date on which it is due to be discharged;
 - (b) if the company trades in goods, a record of inventory and stock in trade, statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined; and
 - (c) a record of the company's revenue and expenditures, including -
 - (i) daily records of all money received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash transactions, the names of the parties to the transactions to be identified;
 - (ii) daily records of all goods purchased and sold on credit, and services received and rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
 - (iii) statements of every account maintained in a financial institution in the name of the company, or in any name under which the company carries on its activities, together with vouchers or other supporting documentation for all transactions recorded on any such statement.
 - (4) In addition to the requirements set out above, a non profit company must maintain a register of revenue received from donations, grants, and member's fees, or in terms of any funding contracts or arrangements with any party, to the extent applicable.
 - (5) The accounting records required to be kept by the Act and this regulation must be kept in such a manner as -

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- (a) to provide adequate precautions against -
 - (i) theft, loss or intentional or accidental damage or destruction; and
 - (ii) falsification; and
 - (b) to facilitate the discovery of any falsification.
- (6) If a company keeps any of its accounting records in electronic form, the company must –
- (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
 - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.
- (7) For greater certainty, the requirements of this regulation are in addition to, and not in substitution for, any applicable requirements to keep accounting records set out in terms of any other law, or any agreement to which the company is a party.

28. Financial Reporting Standards

Authority: s. 29(4)

- (1) In this Regulation, -
- (a) “IFRS” means the International Financial Reporting Standards as adopted from time to time by the International Accounting Standards Board or its successor body and approved for use in South Africa from time to time by the Council; and
 - (b) “IFRS for SMEs” means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the International Accounting Standards Board or its successor body and approved for use in South Africa from time to time by the Council.

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- (2) For any particular company, any financial statements contemplated in section 28 or 29 must comply with the applicable standards for that category of company as follows:

State owned and Profit companies

Category of Companies	Applicable Financial Reporting Standard
State owned companies.	IFRS, but in the case of any conflict with any requirements in terms of the Public Finance Management Act, the Public Audit Act, or other applicable national legislation, the latter prevails.
Public companies listed on an exchange.	IFRS, but in the case of any conflict with the applicable listing requirements of the relevant exchange, the latter prevails.
Public companies not listed on an exchange.	IFRS
Profit companies, other than public companies, that are required in terms of Regulation 29 (1)(a) to have their annual financial statements audited.	IFRS
Profit companies that are required in terms of Regulation 30 (2)(b) to have their annual financial statements independently reviewed.	IFRS for SMEs
Profit companies that are - (a) required in terms of Regulation 30(2)(a) to have their annual financial statements independently compiled and reported, or (b) exempted from having their annual financial statements audited or reviewed.	There is no prescribed Financial Reporting Standard

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Non-Profit Companies

Category of Companies	Applicable Financial Reporting Standard
Non profit companies that are required in terms of Regulation 29 (1)(a) to have their annual financial statements audited.	IFRS, but in the case of any conflict with any requirements in terms of the Public Finance Management Act, the Public Audit Act, or other applicable national legislation, the latter prevails.
Non profit companies that are required in terms of Regulation 29 (1)(b) to have their annual financial statements audited.	IFRS
Non profit companies that are required in terms of Regulation 30 (2)(b) to have their annual financial statements independently reviewed.	IFRS for SMEs
Non profit companies that are required in terms of Regulation 30 (2)(a) to have their annual financial statements independently compiled and reported.	There is no prescribed Financial Reporting Standard

29. Categories of companies required to be audited

Authority: s. 30 (2), read with 30 (7)

- (1) In addition to public companies and state owned companies, a company that falls within any of the following categories with respect to any particular financial year must have its annual financial statements for that financial year audited:
- (a) Any profit or non-profit company if, in the ordinary course of its activities, it holds assets in a fiduciary capacity for a broad group of persons who are not related to the company, whether it does so –
 - (i) as its primary activity; or
 - (ii) incidental to its primary activity in any manner contemplated in terms of section 65 (2) of the Consumer Protection Act, 2008.
 - (b) Any non-profit company, if it –

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- (i) was incorporated -
 - (aa) directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company; or
 - (bb) primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity; or
 - (ii) it solicits or accepts donations from the general public and –
 - (aa) its assets, as reported on its annual financial statement for the immediately preceding year, exceeded R 60 Million; or
 - (bb) its current expenditures, as reported on its annual financial statement for the immediately preceding year, exceeded R120 million.
 - (c) Any profit or non-profit company that is subject to a compliance notice, in accordance with Regulation 32 (5)(b)(ii), requiring it to have its annual financial statement for that particular year audited.
- (2) Nothing in this regulation precludes a company -
- (a) that is required to prepare its financial statements to the standards of IFRS for SMEs from preparing its financial statements to the standards of IFRS instead; or
 - (b) that is not subject to any prescribed standards from preparing its financial statements to the standards of either IFRS or IFRS for SMEs.

30. Independent reviews of annual financial statements

Authority: s. 30 (7)

- (1) This Regulation applies to any company that, with respect to any particular financial year, is neither –
 - (a) required, in terms of the Act or Regulation 29, to have its annual financial statements for that financial year audited; or
 - (b) exempted, in terms of section 30(2)(b)(ii), read with Regulation 31, from any requirement to have its annual financial statements for that year audited or reviewed.

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- (2) Unless it is required by its Memorandum of Incorporation, or chooses voluntarily, to have its annual financial statements audited, a company to which this regulation applies must have its annual financial statements for a particular financial year -
- (a) independently compiled and reported if, on its annual financial statement for the immediately preceding year, –
 - (i) it reported assets totalling less than R 5 million; and
 - (ii) it reported annual revenue, from its business activities in the case of a profit company, or from donations, grants, membership fees and business activities in the case of a non-profit company, of less than R 20 million; or
 - (b) reviewed by an independent accounting professional -
 - (i) in accordance with the requirements of ISRE 2400, if –
 - (aa) the company's assets, as reported on its annual financial statements for the three immediately preceding financial years, averaged at least R100 million; or
 - (bb) the turnover of the company as calculated in accordance with Regulation 175, and as reported on its annual financial statements for the three immediately preceding financial years, averaged at least R200 million; or
 - (ii) in any other case, in accordance with the requirements of ISRS 4400, as promulgated from time to time.
- (3) For the purposes of this regulation -
- (a) If a company has been existence for a shorter time than contemplated in sub-regulation (2)(b), the calculation of the company's average assets and turnover must be made on the basis of the number of previous financial years for which the company has produced annual financial statements;
 - (b) "ISRE 2400" means the International Standards for Review Engagements, as promulgated from time to time;
 - (c) "ISRS 4400" means the International Standards for Independent Reviews, as promulgated from time to time;
 - (d) "independent accounting professional" when used with respect to any particular company, means a person who -
 - (i) is a member in good standing of a professional body that is a member of the International Federation of Accountants; and

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- (ii) does not have a personal financial interest in the company or a related or inter-related company; and
 - (iii) is not -
 - (aa) involved in the day to day management of the company's business nor has been so involved at any time during the previous three financial years;
 - (bb) a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
 - (cc) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that professional is compromised by that relationship; and
 - (iv) is not related to any person who falls within any of the criteria set out in clause (ii) or (iii).
 - (e) "independently compiled and reported" means that the annual financial statements are prepared -
 - (i) by an independent accounting professional;
 - (ii) on the basis of financial records provided by the company; and
 - (iii) in accordance with any relevant financial reporting standards.
 - (4) Section 90 (3), 92, and 93 (1) and (2), each read with the changes required by the context, applies to the conduct of an independent review in terms of this regulation and, for greater certainty, for all purposes of this regulation, a reference in any of those sections to an auditor must be regarded as referring to an independent accounting professional.

31. General exemption from audit and review

Authority: s. 30 (2)(b)(ii), read with s. 223

- (1) Subject to any contrary requirement set out in its Memorandum of Incorporation, or to a compliance notice issued in terms of Regulation 32 (5)(b)(ii), a profit company that falls within the category of companies contemplated in section 30 (2)(b)(i)(aa) or (bb) is unconditionally exempted in terms of the Act from the requirement to have its annual financial statement either audited or independently reviewed.
- (2) For greater certainty, nothing in section 30 (2)(b)(i)(aa) or (bb), or sub-regulation (1), is to be construed as relieving a company of any obligation arising in terms any

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law other than this Act, a court order, or an agreement to which the company is a party, to have its annual financial statements audited or reviewed.

32. Company annual returns*Authority: s.33*

- (1) If a company's financial year end coincides with the anniversary date of its incorporation, the company must file its annual return in Form CoR 32.1 within 20 business days after the company's board approves its annual financial statements in terms of section 30 (3)(c).
- (2) If a company's financial year end does not coincide with the anniversary date of its incorporation -
 - (a) the company must file its annual return in Form CoR 32.1 within 20 business days after the anniversary date of its incorporation; and
 - (b) if, in terms of section 33 (1)(a) or sub-regulation (3), the company is required to file a copy of its annual financial statements in conjunction with its annual return, that requirement will be satisfied if the company files its next ensuing annual financial statements within 20 business days after the company's board approves those annual financial statements in terms of section 30 (3)(c).
- (3) A company that is -
 - (a) required in terms of Regulation 29 to have its annual financial statements audited in a particular year, must file a copy of those statements as a supplement to its annual return, in accordance with sub-regulation (1) or (2) as applicable; or
 - (b) not required in terms of the Act or Regulation 29 to have its annual financial statements audited in a particular year, but has nevertheless voluntarily had those statements audited must, at the option of the company, either -
 - (i) file a copy of those audited statements as a supplement to its annual return in accordance with sub-regulation (1) or (2) as applicable; or
 - (ii) file a financial accountability supplement to its annual return in the relevant form as set out in sub-regulation (4); or
 - (c) not required in terms of the Act or Regulation 29 to have its annual financial statements audited in a particular year, and has not voluntarily had those statements audited, must file a financial accountability supplement to its annual return in the relevant form as set out in sub-regulation (4).
- (4) A company that elects or is required to file a financial accountability supplement to its annual return must file it with the annual return in -

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- (a) Form CoR 32.2 if the company is exempted from any audit or review requirement as contemplated in Regulation 31;
 - (b) Form CoR 32.3 if the company is a non profit company that was required only to have its annual financial statements independently compiled and reported, as contemplated in Regulation 30 (2)(a);
 - (c) Form CoR 32.4 if the company was required to have its annual financial statement independently reviewed, as contemplated in Regulation 30 (2)(b).
- (5) The Commission -
- (a) must establish a systematic procedure to select and review a sampling of financial accountability supplements that have been filed in terms of this regulation, with the objects of –
 - (i) monitoring compliance with the financial record keeping and financial reporting provisions of the Act; and
 - (ii) identifying companies whose annual financial statements for a particular year should be audited; and
 - (b) may issue a compliance notice to any such company either –
 - (i) setting out changes that are required to the company's practices to better comply with the financial record keeping and financial reporting provisions of the Act; or
 - (ii) requiring the company to have its most recent annual financial statements audited on the grounds that the activities of the company during the previous year raise a reasonable apprehension of potentially adverse consequences to the public, which cannot be dispelled without such an audit being performed.
- (6) A compliance notice issued in terms of this regulation is subject to every provision of the Act respecting compliance notices.
- (7) An external company must file its annual return in Form CoR 32.5 within 20 business days after the anniversary date of its registration as an external company.

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Regulation 33-r35

Part D – Capitalization of Profit Companies**33. Application of solvency and liquidity test to groups of companies***Authority: s. 223 (1)(d)(ii)*

- (1) Whenever the “aggregate assets of a company”, and the “aggregate liabilities of a company”, within a group of companies are required to be evaluated in terms of section 4 (1)(a) the evaluation must consider whether—
 - (a) the assets of the relevant company equal or exceed its liabilities; and
 - (b) the assets of each subsidiary of the relevant company equal or exceed that subsidiary's liabilities.

34. Powers of company with respect to shares*Authority: s 223(1)(d)(ii)*

- (1) Despite the repeal of the Companies Act, 1973, a pre-existing company retains all of the powers set out in that Act in respect of its shares that were issued and outstanding immediately before the effective date, to the extent necessary to give full effect to -
 - (a) section 35 (6); and
 - (b) Item 6 (2) of Schedule 5, subject to Regulation 35.

35. Conversion of par value shares, and related matters*Authority: Schedule 5 Item 6*

- (1) This regulation does not apply in respect of a company contemplated in Item 6 (1) of Schedule 5.
- (2) A pre-existing company may not authorize any new par value shares on or after the effective date.
- (3) If, immediately before the effective date, a pre-existing company has any authorised class of par value shares from which it has -
 - (a) issued any shares before the effective date, the company may issue further shares of that class at any time on or after the effective date, until it has converted its par value shares in accordance with this Regulation; or
 - (b) not issued any shares before the effective date -
 - (i) the company must not issue any shares of that class on or after the effective date, unless the company's board has first converted that class of authorised shares to shares having no par value; and

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- (ii) the board of the company may convert that class of authorised shares to shares having no par value by adopting a resolution to do so and filing a notice of that resolution in Form CoR # 35.
- (4) Every share of a pre-existing company contemplated in Item 6 (2) of Schedule 5 must be converted to a share having no par value within 5 years after the effective date.
- (5) The Commission may issue a compliance notice to any pre-existing company that has not converted its par value shares within the time contemplated in sub-regulation (4).
- (6) At any time during the period contemplated in sub-regulation (4), a pre-existing company that has shares that are required to be converted in terms of that sub-regulation –
- (a) must so indicate on its annual return filed with the Commission in terms of section 33; and
- (b) may file without charge an amendment to its Memorandum of Incorporation to effect such a conversion, after adopting that amendment in accordance with sub-regulations (7) and (8).
- (7) An amendment to a pre-existing company's Memorandum of Incorporation to effect a conversion of par value shares in terms of this regulation must –
- (a) be proposed by the company's board and distributed to the shareholders, at least 10 business days before the meeting at which it will be considered; and
- (b) be approved by a special resolution adopted at a meeting of the shareholders called for that purpose; and
- (c) satisfy the requirements of Item 6 (3) (a) and (b) of Schedule 5.
- (8) The board must cause a report to be prepared with a proposed resolution to convert any par value shares, which must at a minimum –
- (a) state all information relevant to the value of the securities affected by the proposed conversion;
- (b) identify every type and class of holders of the company's securities affected by the proposed conversion;
- (c) describe the material effects that the proposed conversion will have on the rights and interests of the persons mentioned in paragraph (b), and
- (d) evaluate any material adverse effects of the proposed arrangement against the compensation that any of those persons will receive in terms of the arrangement.

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- (9) At any time before a meeting called to consider a company's proposal contemplated in this Regulation –
- (a) the company may apply to a court for a declaratory order that the proposal satisfies the requirements of Item 6 (3) (a) and (b) of Schedule 5; or
 - (b) a shareholder affected by the proposal, who believes that the proposal does not adequately protect their rights, or other wise fails to satisfy the requirements of Item 6 (3) (a) and (b) of Schedule 5, may apply to the court for an order,
- and the court may make any order that is just and reasonable in the circumstances, and that furthers the objects of Item 6 of Schedule 5 and this Regulation.
- (10) Section 164 does not apply with respect to a resolution to convert par value shares of a pre-existing company in terms of this regulation, if –
- (a) the company prepared a proposal within the time contemplated in sub-regulation (4); and
 - (b) a court has made an order in terms of sub-regulation (9) with respect to that proposal; and
 - (c) the company has complied with any such order.
- (11) Despite the repeal of the Companies Act, 1973, section 78 of that Act applies with respect to the conversion of par value shares in terms of this Regulation.

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Regulation 36

Part E – Securities Registration and Transfer**36. Company securities registers***Authority: s. 50 (1)(b)*

- (1) The securities register of a profit company required in terms of section 24 (4)(a), read with section 50 (2)(b), must be kept in one of the official languages of the Republic, and must comprise –
 - (a) for every class of authorized securities, a record of –
 - (i) the number of securities authorized, and the date of authorization;
 - (ii) the total number of securities of that class that have been issued, re-acquired or surrendered to the company; and
 - (iii) the number of issued securities of that class that are held in uncertificated form;
 - (b) in respect of every issuance, re-acquisition or surrender of securities of any particular class, entries showing –
 - (i) the date on which the securities were issued, re-acquired or surrendered to the company;
 - (ii) the distinguishing number or numbers of any certificated securities issued, re-acquired or surrendered to the company;
 - (iii) the consideration for which the securities were issued or re-acquired by, or surrendered to the company; and
 - (iv) the name and identity number of the person to, from or by whom the securities were issued, re-acquired or surrendered, as the case may be;
 - (c) for every class of authorized securities, at any time –
 - (i) the number of securities of that class that are available to be issued; and
 - (ii) the number of securities of that class that are the subject of options or conversion rights which, if exercised, would require securities of that class to be issued.
- (2) In addition to the information otherwise required, the company's securities register must also include -
 - (a) in respect of each person to whom the company has issued securities, or to whom securities of the company have been transferred -

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- (i) the person's name and business or residential address, as required by section 50 (2) (b) (i), and the person's email address if available;
 - (ii) an identifying number that is unique to that person;
 - (iii) in respect of each issue of securities to that person, the consideration for which the securities were issued, as determined by the company's board in terms of section 40; and
 - (iv) in respect of each issue or transfer of securities to that person –
 - (aa) the date on which the securities were issued or transferred to the person;
 - (bb) the number and class of securities issued or transferred to the person;
 - (cc) the distinguishing number or numbers of the securities issued or transferred to the person, if the securities are held in certificated form;
 - (v) the date on which any securities that had been issued or transferred to the person were subsequently -
 - (aa) transferred by that person, or by operation of law, to another person; or
 - (bb) re-acquired by, or surrendered to, the company in terms of any provision of the Act or the Memorandum of Incorporation; and
 - (vi) at any time, the total number of securities of that class held by the person.
- (3) If a company contemplated in section 56 (7) has received any disclosure of a beneficial interest referred to in that section, the securities register of that company, despite any additional requirements that may be imposed by a central securities depository, must also include -
- (a) a record of all such disclosures, including the following information for any securities in respect of which a disclosure was made–
 - (i) the name and unique identifying number of the registered holder of the securities;
 - (ii) a reference number to the relevant entry in the company's securities register at which the issue of those securities to the registered holder is recorded;
 - (iii) the number, class and in the case of certificated securities, the distinguishing numbers of the securities; and

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- (iv) the name, unique identifying number, business or residential address, and email address if available, of each person who holds a beneficial interest in the securities, and the extent of each such person's interest in the securities.
 - (4) The requirement of any person to disclose information to a public company in terms of section 56 (4)(a) applies only in respect of a month during which a change has occurred in the information contemplated in section 56 (3), except to the extent that the requirements of a central securities depository provide for more frequent disclosure.
 - (5) The securities register required to be kept by the Act and this regulation must be kept in such a manner as -
 - (a) to provide indexed access to all relevant entries for any one person;
 - (b) to provide adequate precautions against -
 - (i) theft, loss or intentional or accidental damage or destruction; and
 - (ii) falsification; and
 - (c) to facilitate the discovery of any falsification.
 - (6) If a company keeps its securities register in electronic form, the company must –
 - (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
 - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later storage media, or software, to the extent necessary from time to time.
 - (7) Any entry in a securities register pertaining to a person who has ceased to hold securities of the company may be disposed of seven years after that person last held any securities of the company.

37. Acquisition and loss of shareholder rights

Authority: s 223(1)(d)(ii)

A person -

- (a) acquires the rights associated with any particular securities of a company when that person's name is entered in the company's securities register as a shareholder to whom those securities have been issued or transferred; and
- (b) ceases to have the rights associated with any particular securities of a company when the transfer to another person, re-acquisition by the company, or surrender to the company of those securities has been entered in the company's securities register.

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Regulation 38-r39

38. Instruction to convert certificated securities into uncertificated securities*Authority: s. 49 (7)*

- (1) An instruction to a company to convert certificated securities into uncertificated securities must be given by the holder of the certificated securities whose name is entered in the company's securities register as the holder of the certificated securities in question, or by an authorised agent of that person.
- (2) A person who lodges certificated securities with a company, accompanied by an instruction referred to in sub-regulation (1), must do so in the manner and form prescribed in the rules of the central securities depository and must, in particular-
 - (a) provide complete and accurate information about the securities to be converted;
 - (b) indicate clearly on the face of every document of title relating to the certificated securities that those securities have been lodged for conversion into uncertificated securities.

39. Duties of company*Authority: s. 49 (7)*

- (1) A company that has been instructed to convert certificated securities into uncertificated securities –
 - (a) must ensure that the documents and instruction lodged with it comply with the rules of the central securities depository;
 - (b) must ensure that the documents of title and other information relating to the certificated securities correspond to the particulars contained in the securities register;
 - (c) must ensure that--
 - (i) the distinguishing number recorded in terms of section 50 (5) is valid;
 - (ii) the distinguishing number represents the document of title evidencing the entitlement of the person who has given the instruction to convert;
 - (iii) a document of title relating to the certificated securities is valid and has not been cancelled or recorded by the company as lost or stolen; and
 - (iv) the number of certificated securities to which a document of title relates does not exceed the holding allocated to the holder of the securities concerned in the securities register;
 - (d) must verify that the document of title relating to the certificated securities has, on the face of it, been validly issued by the company; and

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- (e) may not act on an instruction to convert if it has reason to doubt the validity of the instruction or the document of title relating to the certificated securities.
- (2) After a company has accepted an instruction to convert certificated securities into uncertificated securities, it must--
- (a) record in the securities register the date on which the securities are converted;
- (b) indicate clearly on the face of the document of title relating to the securities that the securities have been converted;
- (c) reflect the converted securities as uncertificated securities in its securities register.
- (3) After certificated securities have been converted in terms of sub-regulation (2), the company must instruct -
- (a) the participant appointed by the holder of the securities; or
- (b) in the absence of such a participant -
- (i) a participant appointed by the company which has agreed with the company to hold the securities on behalf of the securities holder; or
- (ii) the central securities depository,
- to enter the number of uncertificated securities and the name of the holder of the securities, as it appeared in the company's securities register before the conversion took place, in an uncertificated securities register in accordance with the rules of the central securities depository.
- (4) Except in accordance with section 54, or a court order, a company may not -
- (a) require a participant or central securities depository to remove or change the particulars of uncertificated securities from or in an uncertificated securities register; or
- (b) reduce the balance of uncertificated securities recorded in its securities register.

40. Legality of functions

Authority: s. 49 (7)

The proper performance of the functions referred to in regulations 38 and 39 is deemed to be lawful for the purposes of section 55 (1).

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Regulation 41-r43

Part F – Governance of Companies**41. Pre-incorporation contracts***Authority: s. 223 (1)(d)(ii)*

If the board of a company has completely or partially rejected, or partially ratified, a pre-incorporation contract, as contemplated in section 21 (3), the company must, within 5 business days, -

- (a) file a notice of its decision with respect to that contract in Form CoR 41; and
- (b) deliver a copy of that notice to each person who is a party to the contract.

42. Uniform standards for providing information*Authority: s. 223 (1)(d)(i)*

- (1) A person who holds any securities of a company may give notice to the company for any purpose contemplated in sections 37 (8), 39, 56, 58, 115 (8), 164 (3), or 165 (2) by delivering a completed Form CoR 42.1 to the company, except to the extent that the requirements of a central securities depository provide otherwise.
- (2) A company may notify each person who holds any securities of the company for any purpose contemplated in sections 39, 45(5), 56 (5), 60, 62 (1), or 164 (2) and (4), by delivering a completed Form CoR 42.2 to each registered security holder, except to the extent that the requirements of a central securities depository provide otherwise.
- (3) A director or prescribed officer of a company may give notice of a personal financial interest to the company by delivering a completed Form CoR 42.3.

43. Voting by holders of beneficial interests*Authority: s. 49 (7), read with s 223 (1)(d)(ii)*

- (1) This regulation does not apply in respect of securities that are subject to the Rules of a central securities depository.
- (2) A person who holds a beneficial interest in any securities may vote in a matter at a meeting of shareholders, only to the extent that –
 - (a) the beneficial interest includes the right to vote on the matter; and
 - (b) the person's name is on the company's register of disclosures as the holder of a beneficial interest, or the person holds a proxy appointment in respect to that matter from the registered holder of those securities.
- (3) The registered holder of any securities in which any person has a beneficial interest must deliver to each such person -

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- (a) a notice of any meeting of a company at which those securities may be voted of a matter, within 2 business days after receiving such a notice from the company; and
 - (b) a proxy appointment to the extent of that person's beneficial interest, if the person so demands in terms of sub-regulation (4).
- (4) A person who has a beneficial interest in any securities that are entitled to be voted on a matter at a meeting of company's shareholders may demand a proxy appointment from the registered holder of those securities, to the extent of that person's beneficial interest, by delivering such a demand to the registered holder, in Form CoR 43 or in any other written form, or as required by the applicable requirements of a central securities depository.

44. Record dates

Authority: S. 59 (2)(b)

- (1) If any securities of a particular company are in uncertificated form, or otherwise subject to rules of a central securities depository, the company must set the record date in accordance with those rules.
- (2) A company must publish a notice of a record date for any matter in any manner set out in Regulation 6.

45. Prescribed officers of companies

Authority: s 66 (10)

For all purposes of the Act a person is a "prescribed officer" of a company if, despite not being a director of the company, that person -

- (a) has general executive authority over the company, (such as a President, Chief Executive Officer, Managing Director, Executive Director or similar office holder) by whatever title the office is designated;
- (b) has general responsibility for the financial management of the company (such as a Treasurer, Chief Financial Officer, Chief Accounting Officer, or similar office holder,) by whatever title the office is designated;
- (c) has general responsibility for management of the legal affairs of the company, (such as a General Secretary, General Counsel or similar office holder) by whatever title the office is designated; or
- (d) has general managerial authority over the operations of the company, (such as a Chief Operating Officer or similar office holder,) by whatever title the office is designated; or
- (e) otherwise directly or indirectly exercises, or significantly influences the exercise of, control over the general management and administration of the whole or a significant portion of the business and activities of the company,

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Regulation 46-r47

irrespective of any title assigned by the company to an office held by that person, or function performed by that person.

46. Directors

Authority: s. 69(8)(b)(iv), s. 70 (6)

- (1) A Notice of Change Regarding a Director must be filed in Form CoR 46.
- (2) The prescribed minimum value of a fine upon conviction for certain offences, which would result in automatic disqualification as a director in terms of section 69 (8)(b)(iv) is R 1 000.

Part G – Winding up and Deregistering companies

47. Winding-up, dissolution and de-registration of companies

Authority: s. 80 to 82

- (1) A resolution by a solvent company to wind up must be filed with Form CoR 47.1.
- (2) If a company has failed to file an annual return for two years in succession, as contemplated in section 82 (3) the Commission –
 - (a) may deliver a demand letter in Form CoR 47.2 to the company by registered post or electronic communication requiring the company to provide the satisfactory information contemplated in section 82 (3)(a)(ii); and
 - (b) may deregister the company if the company does not respond within 20 business days after the date that the demand was posted.
- (3) If a company responds to a demand sent to it in terms of sub-regulation (3)(a), the Commission –
 - (a) may de-register the company if the information received in response to the demand confirms that the company is no longer active; or
 - (b) if the information received in response to the demand confirms that the company is active -
 - (i) may require additional information if the information provided is unsatisfactory in terms of section 82 (3)(a)(ii); or
 - (ii) may issue a compliance notice requiring the company to file an annual return for every year that it has failed to do so; or
 - (iii) must issue a compliance certificate, if the information is satisfactory and the company has filed an annual return for every year that it had failed to do so.
- (4) If a company fails to provide satisfactory additional information required in terms of sub-regulation (4)(b)(i) within 20 business days, the Commission may –

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- (a) issue a Notice of Pending Deregistration in form CoR 47.3 to the company; and
 - (b) deregister the company at any time more than 20 business days after delivering the Notice of Pending Deregistration, unless during that time the company has filed its annual return for every year that it had failed to file.
- (5) When any company has been deregistered the books and papers of the company may be disposed of in such way as the Commission may direct.
 - (6) An application to re-instate a de-registered company must be made in Form CoR 47.4.
 - (7) A letter or notice under this regulation must be addressed to the company at its registered office.

48. Transitional effect of previous regulations concerning insolvent companies

Despite the repeal of the Companies Act, 1973, the Regulation for the Winding-Up and Judicial Management of Companies as promulgated under Government Notice R2490 of 28 December 1973, and as subsequently amended from time to time, continues to apply to any matter to which Chapter 14 of the Companies Act, 1973 continues to apply in terms of Item 9 (1) to (3) of Schedule 5 of the Act, until the date to be determined as contemplated in Item 9 (4) of Schedule 5.

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Chapter 3 - Enhanced Accountability and Transparency**49. Application of chapter to other than public and state-owned companies***Authority: s. 223 (1)(d)(ii)*

- (1) In order to give full effect to section 84 (1)(c), any company that is required, in terms of section 30 (2)(b)(i) read with Regulation 29, to have its annual financial statements audited must comply with every obligation of a public company set out in Chapter 4 of the Act.
- (2) A company that is not required to comply with Chapter 3, other than by its Memorandum of Incorporation as contemplated in section 34 (2) –
 - (a) is subject to section 84 (5) to (7) and section 85, only to the extent that the company is subject to Part B, or Parts C and D, of Chapter 3, as the case may be;
 - (b) is subject to Part B of Chapter 3, only if its Memorandum of Incorporation either –
 - (i) requires the company to comply with the whole of Chapter 3; or
 - (ii) requires the company to appoint a company secretary; and
 - (c) is subject to Parts C and D of Chapter 3, only if its Memorandum of Incorporation either –
 - (i) requires the company to comply with the whole of Chapter 3; or
 - (ii) requires the company to appoint an auditor.

50. Social and Ethics Committee*Authority: s. 72 (4)*

- (1) A public or a state owned company must appoint a social and ethics committee, unless -
 - (a) it is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or
 - (b) it has been exempted by the Tribunal in accordance with sub-regulation (2).

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- (2) A company may apply to the Tribunal in form CTR 1 for an exemption from the requirement to appoint a social and ethics committee, and the Tribunal may grant such an exemption if it is satisfied that –
 - (a) the company is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee in terms of section 72 (4) and this regulation; or
 - (b) despite being a public or state owned company, it is not reasonably necessary in the public interest to require the company to have a social and ethics committee, having regard to the the nature and extent of the activities of the company.
 - (3) An exemption granted in terms of sub-regulation 2 is valid for 5 years, or such shorter period as the Tribunal may determine at the time of granting the exemption, unless set aside by the Tribunal in terms of sub-regulation (4)
 - (4) The Commission, on its own initiative or on request by a shareholder or a person who was granted standing by the Tribunal at the hearing of the exemption application, may apply to the Tribunal to set aside an exemption only on the grounds that the basis on which the exemption was granted no longer applies.
 - (5) A company that is required to have a social and ethics committee, and that -
 - (a) exists on the effective date, must elect the members of the committee at each annual general meeting of the company, commencing with the annual general meeting held during 2011; or
 - (b) is incorporated on or after the effective date, must –
 - (i) constitute a social and ethics committee by appointment by –
 - (aa) the incorporators of the company, or
 - (bb) the board within 40 business days after the incorporation of the company; and
 - (ii) elect the members of the committee at each annual general meeting of the company, commencing with the first annual general meeting held after the company is incorporated.
 - (6) A company's social and ethics committee comprises not less than three directors of the company, a majority of whom must satisfy the requirements set out in sub-regulation (8).
 - (7) If a company is required to have a social and ethics committee, the Board must appoint a social and ethics advisory panel to assist the committee, comprising, from each of the following categories, a number of persons equivalent to the number of members of the committee -

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- (a) the employees of the company; and
- (b) persons who are registered members of a profession entitled to practice in a field directly related to social and ethical matters including, but not limited to -
- (i) anthropology or psychology,
 - (ii) education,
 - (iii) environmental assessment,
 - (iv) health,
 - (v) sociology or social services, or
 - (vi) law, theology or ethics
- and who are accountable to their respective professional bodies in terms of ethical standards and rules of professional conduct; and
- (c) persons who are neither directors or employees of the company, but who represent the community and public interest, having regard to location and nature of the company's activities and the consumers of its products or services.
- (8) Every member of a company's social and ethics advisory panel must be a person who is not -
- (a) disqualified in terms of the Act from being a director or prescribed officer of that company;
 - (b) involved in the day to day management of the company's business nor has been so involved at any time during the previous three financial years;
 - (c) a prescribed officer, or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
 - (d) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that person is compromised by that relationship;
 - (e) an office bearer of any registered trade union representing employees of the company; or
 - (f) related to any person who falls within any of the criteria set out in paragraph (b), (c), (d) or (e).

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- (9) Section 75 (5), read with the changes required by the context, applies to any person participating in a discussion of a matter being considered by the social and ethics advisory panel of a company.
- (10) Participation by any person in the social and ethics advisory panel of a company does not –
- (a) entitle that person to vote in any matter to be decided by the social and ethics committee;
 - (b) confer on that person the status of a director of the company, or membership in any committee of the board of the company, or entitle that person to any rights of a director of the company or member of any such committee;
 - (c) impose on that person any duty or obligation of a director of the company, other than the obligation to disclose a personal financial interest in a matter, as required by sub-regulation (9).
- (11) If a vacancy occurs in the social and ethics committee at any time, other than within 40 business days immediately before the next annual general meeting of the company, the board of the company must appoint a person within 40 business days after the vacancy occurs to fill the vacancy until the next annual general meeting, from among the other qualified directors of the company.
- (12) A social and ethics committee has the following functions:
- (a) To monitor the company's activities, having regard to any relevant legislation, other legal requirements or prevailing codes of best practice, with regard to matters relating to -
 - (i) social and economic development, including the company's standing in terms of the goals and purposes of -
 - (aa) the 10 principles set out in the United Nations Global Compact Principles; and
 - (bb) the OECD recommendations regarding corruption;
 - (cc) the Employment Equity Act; and
 - (dd) the Broad-Based Black Economic Empowerment Act;
 - (ii) good corporate citizenship, including the company's -
 - (aa) promotion of equality, prevention of unfair discrimination, and reduction of corruption;
 - (bb) contribution to development of the communities in which its activities are predominantly conducted or within which its products or services are predominantly marketed; and

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- (cc) record of sponsorship, donations and charitable giving;
 - (iii) the environment, health and public safety, including the impact of the company's activities and of its products or services;
 - (iv) consumer relationships, including the company's advertising, public relations and compliance with consumer protection laws; and
 - (v) labour and employment, including
 - (aa) The company's standing in terms of the International Labour Organization Protocol on decent work and working conditions; and
 - (bb) The company's employment relationships, and its contribution toward the educational development of its employees;
 - (b) to consult with the company's social and ethics advisory panel with respect to any matter within the mandate of the committee;
 - (c) to draw matters within its mandate to the attention of the Board as occasion requires; and
 - (d) to report annually to the shareholders at the company's annual general meeting on the matters within its mandate.
- (13) A social and ethics committee of a company is entitled to -
- (a) require from any director or prescribed officer of the company any information or explanation necessary for the performance of the committee's functions;
 - (b) request from any other employee of the company any information or explanation necessary for the performance of the committee's functions;
 - (c) attend any general shareholders meeting;
 - (d) receive all notices of and other communications relating to any general shareholders meeting; and
 - (e) be heard at any general shareholders meeting contemplated in this paragraph on any part of the business of the meeting that concerns the committee's functions.
- (14) A company must pay all the expenses reasonably incurred by its social and ethics committee including, if the social and ethics committee considers it appropriate, the costs of the social and ethics advisory panel, or the fees of any consultant or specialist engaged by the social and ethics committee in the performance of its functions.

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Chapter 4 - Offerings of Company Securities : Part A – Offering Securities

Regulation 51-r53

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- (15) Section 84 (6) and (7), read with the changes required by the context, apply with respect to a company that fails to appoint a social and ethics committee, or social and ethics advisory panel, as required by this Regulation.

51. Forms required by this Chapter

- (1) A notice issued by the Commission to a company that has failed to appoint an auditor, company secretary, audit committee or social and ethics committee, as contemplated in section 84 (6), or Regulation 50 (15), must be in Form CoR 51.1.
- (2) A notice of appointment of auditor or company secretary, or of person ceasing to act in either capacity, as contemplated in section 85 (3), must be in Form CoR 51.2.

Chapter 4 - Offerings of Company Securities

Part A – Offering Securities

52. Threshold values and time periods

Authority: s. 96 (2)

- (1) The threshold value required in terms of section 96 (2)(a) is R 100 000.
- (2) The minimum time required in terms of section 96 (2)(b) is 6/12 months.

53. Forms relating to securities offerings

- (1) Documents filed in connection with an employee share scheme, as required by section 97 (2)(c) must be accompanied by Form CoR 53.1.
- (2) A certificate required by section 97 (2)(d) must be in Form CoR 53.2.
- (3) An application to exclude categories of persons from a rights offer, as contemplated in section 99 (7) must be filed in Form CoR 53.3.
- (4) A notice of registration of a prospectus issued by the Commission must be in Form CoR 53.4.
- (5) An application to the commission to allow required information to be omitted from a prospectus, as contemplated in section 100 (9) and (10) must be in form CoR 53.5.

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Chapter 4 - Offerings of Company Securities : Part B – Requirements Concerning Offering of Securities

Regulation 54-r55

Part B – Requirements Concerning Offering of Securities**54. Interpretation**

For the purposes of this Part, and Parts C and D of this Chapter, unless the context indicates otherwise –

- (a) “**King Code**” means the Code of Corporate Practices and Conduct representing the principles of good governance as set out in the King Report as amended or replaced from time to time;
- (b) “**property**” includes movable and immovable property, and securities, but does not include any property if its purchase price is not material; and
- (c) “**vendor**” includes any person who, directly or indirectly, sells or otherwise disposes of any property to a company, subject to paragraph (d)(ii); and
- (d) in respect of any property hired or proposed to be hired by a company –
 - (i) “purchase money” includes the consideration for the lease; and
 - (ii) “vendor” includes the lessor.

55. Application

- (1) A report by an auditor required by Part C or D of this Chapter must not be made by any auditor who is -
 - (a) a director, officer or employee, or a partner of or in the employment of a director, officer or employee of the company or of any other company in the group of companies; or
 - (b) related to a person contemplated in paragraph (a).
- (2) If a company has been carrying on business for less than 5 years, or if a business undertaking has been carried on for less than 5 years, the annual financial statements of the company or business undertaking required by this Chapter must be provided only for the number of financial years that the company has existed, or the business has been carried on.
- (3) To the extent that a person making a report required by Part C or D of this Chapter considers it necessary to adjust the amount of profits or losses or assets and liabilities dealt with by the report, that person may either –
 - (a) include a note setting out the adjustments the person considers ought to be made; or
 - (b) make those adjustments, in which case, the person must -