

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

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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Chapter 2 - Formation, Administration and Dissolution of Companies : Part B – Incorporation and Legal Status of Companies

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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- (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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- (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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- (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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- (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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(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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- (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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- (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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Regulation 28

- (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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Regulation 29

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 -