

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part C -- Transparency, accountability and integrity of companies

Regulation 32

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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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part D – Capitalization of Profit Companies

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part D – Capitalization of Profit Companies

Regulation 35

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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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part D – Capitalization of Profit Companies

Regulation 35

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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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part E – Securities Registration and Transfer

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 -

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part E – Securities Registration and Transfer

Regulation 36

-
- (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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part E – Securities Registration and Transfer

Regulation 37

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part E – Securities Registration and Transfer

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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part E - Securities Registration and Transfer

Regulation 40

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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).

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part F – Governance of Companies

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 -

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part F – Governance of Companies

Regulation 44-r45

- (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,

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part G – Winding up and Deregistering companies

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 –

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 2 - Formation, Administration and Dissolution of Companies : Part G – Winding up and Deregistering companies

Regulation 48

- (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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 3 - Enhanced Accountability and Transparency :

Regulation 49-r50

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).

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 3 - Enhanced Accountability and Transparency :

Regulation 50

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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 -

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 3 - Enhanced Accountability and Transparency :

Regulation 50

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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).

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 3 - Enhanced Accountability and Transparency :

Regulation 50

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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

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 3 - Enhanced Accountability and Transparency :

Regulation 50

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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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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.

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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 -