

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 56

- (i) clearly indicate the adjustments that have been made; and
  - (ii) include a note explaining the adjustments that have been made.
- (4) Irrespective whether a person chooses to set out the adjustments that ought to be made, as contemplated in sub-regulation (3)(a), or makes the adjustments, as contemplated in sub-regulation (3)(b), the person making the report must include a note –
- (a) setting out a factual basis in support of the adjustment, or proposed adjustments, as the case may be; and
  - (b) identifying which adjustments have a continuing effect on the company, and which do not.

**56. Letters of allocation in respect of unlisted securities**

*Reference s. 99(4)(a)*

- (1) A company desiring to issue a letter of allocation in respect of unlisted securities must file -
- (a) a copy of -
    - (i) the letter of allocation for registration; and
    - (ii) any document required in the circumstances by section 99 (4);
  - (b) any agreement referred to in a document contemplated in paragraph (a), with a translation in an official language, if the agreement is not already in an official language; and
  - (c) the prescribed fee.
- (2) Upon registering the documents referred to in sub-regulation (1), the Commission must give a written notice of the registration of the letter of allocation to the company concerned or the person who submitted them on behalf of the company.
- (3) Every letter of allocation that is issued must-
- (a) state on the face of it that a copy of it, together with copies of all other documents referred to in sub-regulation (1), have been registered as required by this regulation; and
  - (b) be accompanied by a copy of every document referred to in sub-regulation (1).
- (4) Sub-regulation (3)(b) does not apply to any letter of allocation issued in connection with a renunciation of part of the rights to subscribe in terms of the rights offer.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 57-r58

**57. Rights offers in respect of listed securities***Reference: s. 96 (1)(d)*

The provisions of sections 95 (5) and (6), 100, 102, 104, 105 and 106 and of Regulation 61, each read with the changes required by the context, apply to –

- (a) a rights offer in respect of listed securities; and
- (b) all documents issued in connection with such a rights offer.

**58. General requirements for a prospectus***Reference: s. 100*

- (1) Every prospectus must be produced in a style that satisfies the requirements set out in section 6 (4) to (6).
- (2) As far as possible the general matter of a prospectus must be presented in narrative form, and statistical matter must be presented in tabular form.
- (3) The information required by the Act to be stated in a prospectus must -
  - (a) be set out in print or type;
  - (b) be not less conspicuous than that in which any additional matter is printed or typed; and
  - (c) be set out in separate paragraphs under the headings -
    - (i) included in Part C of this Chapter, unless sub-paragraph (ii) applies to the prospectus; or
    - (ii) contemplated in Part D of this Chapter, if the intended offer -
      - (aa) relates to unlisted securities that are in all respects uniform with previously issued securities of the same company; and
      - (bb) is made only to existing holders of that company securities, with a right to renounce in favour of other persons.
- (4) A prospectus must deal with each of the applicable provisions of Part C or D of this Chapter under its Regulation number and heading.
- (5) The last paragraph of the prospectus, under the heading - 'Paragraphs of Chapter 4 which are not applicable' – must be a list setting out the numbers of any provisions of Part C or D of this Chapter that are not applicable.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 59-r60

- (6) Every prospectus issued must -
  - (a) state on its face that it is a copy of a registered prospectus; and
  - (b) specify or refer to statements included in it specifying any documents required by the Act or this Chapter to be endorsed on or attached to or to accompany a prospectus when it is filed.

**59. Signing, date and date of issue, of prospectus**

- (1) A prospectus in respect of an offer for the subscription of shares of a company must be signed by every person named in it as a director of the company or by an agent authorised in writing by a director to sign on behalf of that director.
- (2) A prospectus in respect of any other offer must be signed by -
  - (a) every person making the offer, or by an agent authorised by that person in writing to sign on their behalf;
  - (b) if the person making the offer is a company or firm –
    - (i) by 2 directors of the company, or if it has only 1 director, by that director;
    - (ii) by not less than one-half of the partners in the firm; or
    - (iii) by an agent authorised by any director or partner in writing to sign on their behalf.
- (3) If a prospectus has been signed by or on behalf of directors of a company or partners in a firm as provided in sub-regulation (2), every director of that company or partner in that firm is deemed to have authorised the issue of the prospectus irrespective whether that director or partner signed it, unless it is proven that it was issued without the director or partner's knowledge, authority or consent.
- (4) Every signature to a prospectus must be dated, and the latest of those dates is deemed to be the date of the prospectus.

**60. Additional information required**

- (1) If it is the intention to acquire a business undertaking or property, the prospectus must include a brief history of that business undertaking or property, including –
  - (a) particulars of each business undertaking or property purchased or acquired, or proposed to be purchased or acquired by the company or any subsidiary of the company, if any part of the purchase price of that business undertaking or property is to be defrayed out of the proceeds of the issue;

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 61

---

- (b) the amount, if any, paid or payable as purchase money in cash or securities for any such business undertaking or property, specifying the amount, if any, paid for goodwill;
  - (c) the name and address of the vendor of the business undertaking or property; and
  - (d) the amount payable in cash or securities to every vendor.
- (2) If the offer is not being underwritten, the prospectus must include a statement by the directors setting out the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed.
- (3) Every prospectus must include a narrative statement setting out –
- (a) the extent to which, and manner in which, the company has applied the principles of the King Code; and
  - (b) the reasons for any instance of non-compliance with the King Code.

**61. Access to supporting documents**

- (1) The original, or a certified copy of each of the following documents relating to the company, and any subsidiary of the company, must be available for inspection at the registered office of the company for at least 10 business days after the date of a prospectus issued by or on behalf of that company:
- (a) The Memorandum of Incorporation
  - (b) All material contracts referred to in regulation ##, and any other agreement referred to in this chapter, if the agreement is written;
  - (c) A memorandum giving full particulars of any unwritten agreement contemplated in paragraph (b);
  - (d) The written consents required by section 102; and
  - (e) The relevant power of attorney documents, or resolutions authorising the signing of the prospectus, if all the directors have not signed the prospectus in terms of regulation 61.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 62-r63

**Part C – Items required to be included in a Prospectus**

*In terms of Regulation 60 (2)(c)(i)*

**I – Information about the company whose securities are being offered**

**62. Name, address and incorporation**

- (1) The name of the company.
- (2) The address of the company's registered office and the office of its transfer agent, if any.
- (3) The date of incorporation of the company.
- (4) If the company is a foreign company –
  - (a) the name of the country in which it was incorporated; and
  - (b) the date and registration number of the company's registration –
    - (i) as an external company in terms of section 23, if it carries on business within the Republic; or
    - (ii) as a foreign company, in terms of section 99 (1)(b).
- (5) In addition to the requirements set out in sub-regulations (1) to (4), if the company is a subsidiary –
  - (a) the name of its holding company; and
  - (b) the address of the registered office of its holding company.

**63. Directors and other office holders**

- (1) The names, occupations and business addresses of the directors and proposed directors of the company (specifying any who hold, or are proposed to hold, a prescribed office in the company), and their nationalities, if not South African.
- (2) The term of office for which any director has been or is to be appointed, the manner in which, and terms on which, any proposed director will be appointed, and particulars of any right held by any person relating to the appointment of any director.
- (3) Particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether or not determined by the Memorandum of Incorporation or by the company or any subsidiary.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

## Regulation 64

- 
- (4) If the business of the company or its subsidiary or any part thereof is managed or is proposed to be managed by a third party under a contract, the name and business address (or the address of its registered office, if a company) of the third party and a description of the business so managed or to be managed.
  - (5) Any borrowing powers of the company and any subsidiary exercisable by the directors, the manner in which any such borrowing powers may be varied, and the extent that any such borrowing powers have been exceeded or varied, or both, during the immediately preceding three years.
  - (6) The name and address of the company's -
    - (a) auditor;
    - (b) attorney, banker, stockbroker, trustee, if any, and underwriter, if any; and
    - (c) company secretary, if any, together with the company secretary's professional qualifications.

**64. History, state of affairs and prospects of company**

- (1) The general history of the company and its subsidiary stating, among other things -
  - (a) the length of time during which the business of the company and of any subsidiary has been carried on; and
  - (b) the date on which the company became a public company.
- (2) A general description of the business carried on or to be carried on by the company and its subsidiary and, if the company or its subsidiary carries on or proposes to carry on, 2 or more businesses that are material having regard to the profits or losses, assets employed or to be employed or any other factor, information as to the relative importance of each such business.
- (3) Details of any change in the business of the company, if material, during the past 5 years.
- (4) A general description giving a fair presentation of the state of affairs of the company and its subsidiary, including-
  - (a) the name, date and place of incorporation and the issued or stated capital of its subsidiary, together with details of the shares held by the holding company, and the main business of its subsidiary and the date on which it became a subsidiary; and
  - (b) if material, a statement as to the estimated commitments of the company and its subsidiary for the purchase, construction or installation of buildings, plant or machinery, the estimated date of completion and the commencement of the operational use thereof.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 65-r66

- (5) Brief particulars of any alteration of capital during the preceding 3 years.
- (6) A summary of any offers of securities of the company to the public for subscription or sale during the preceding 3 years, the prices at which those securities were offered, the number of securities allotted in pursuance thereof and whether issued to all shareholders in proportion to their shareholdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment.
- (7) The situation, area and tenure of the principal immovable property held or occupied by the company and its subsidiary including, in the case of leasehold property, the rental and unexpired term of the lease.
- (8) For the company and each subsidiary, in respect of each of the preceding 5 years, particulars of-
  - (a) the profits or losses before and after tax;
  - (b) the dividends paid;
  - (c) the dividends paid in cents per share; and
  - (d) the dividend cover for each year;or, if the company is a holding company, the same information, with any changes required by the context, for the company in consolidated form.
- (9) The opinion of the directors, stating the grounds for that opinion, as to the prospects of the business of the company and of its subsidiary and of any subsidiary or business undertaking to be acquired or intended to be acquired within one year following the date of the prospectus.

**65. Share capital of the company**

Particulars of the share capital -

- (a) the stated capital, the different classes of shares, and the number of shares authorised, and issued, in respect of each class of shares;
- (b) a description of the respective preferential conversion and exchange rights, rights to dividends, profits or capital of each class, including redemption rights and rights on liquidation or distribution of capital assets; and
- (c) the number of founders' and management or deferred shares, if any, and the special rights attaching to those shares.

**66. Loans**

- (1) Details of material loans, including debentures, to the company and to its subsidiary at the date of the prospectus, stating-

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 67

- 
- (a) whether each such loans is secured or unsecured;
  - (b) the names of the lenders if not debenture-holders;
  - (c) the amount, terms and conditions of repayment;
  - (d) the rates of interest on each loan; and
  - (e) details of the security, if any.
- (2) Details of material loans by the company or by its subsidiary, other than in the ordinary course of business, at the date of the prospectus, stating-
- (a) the date of the loan;
  - (b) the person to whom made;
  - (c) the rate of interest;
  - (d) if the interest is in arrear, the last date on which it was paid and the extent of the arrears;
  - (e) the period of the loan;
  - (f) the security held;
  - (g) the value of that security and the method of valuation;
  - (h) if the loan is unsecured, the reasons therefor; and
  - (i) if the loan was made to another company, the names and addresses of the directors of that company.

**67. Options or preferential rights in respect of shares**

- (1) The substance of any agreement or proposed agreement, as at the date of the prospectus, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or its subsidiary, giving the number and description of any such shares, including, in regard to the option or right, particulars of-
- (a) the period during which it is exercisable;
  - (b) the price to be paid for shares subscribed for under it;
  - (c) the consideration given or to be given for it;
  - (d) the names and addresses of the persons to whom it was given, other than to existing shareholders as such or to employees under a bona fide staff option scheme;



COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 68-r69

- (e) if given to existing shareholders as such, material particulars thereof; and
  - (f) any other material fact or circumstance concerning the granting of such option or right.
- (2) For the purpose of this regulation, “subscribing for shares” includes acquiring them from a person to whom they were allotted, or were agreed to be allotted, with a view to that person offering them for sale.

**68. Shares issued or to be issued otherwise than for cash**

The number of shares that, within the preceding 2 years, were issued or were agreed to be issued by the company or its subsidiary to any person, otherwise than for cash, and the consideration for which those shares were issued or were agreed to be issued, and the value of the property, if any, acquired or to be acquired.

**69. Property acquired or to be acquired**

- (1) Particulars of any immovable property or other property of the nature of fixed assets purchased or acquired by the company or its subsidiary or proposed to be purchased or acquired, the purchase price of which is to be defrayed in whole or in part out of the proceeds of the issue, or is to be or was within the preceding 2 years paid in whole or in part in securities of the company or its subsidiary, or out of the funds of the company or its subsidiary, whether in cash or shares, or the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or its subsidiary.
- (2) Details of the consideration given, or to be given, for the acquisition of any such property, specifying the value payable for goodwill, if any.
- (3) The names and addresses of the vendors and the consideration received or to be received by each.
- (4) Brief particulars of any transaction relating to the property completed within the preceding 2 years in which any vendor of the property to the company or its subsidiary or any person who is or was at the time of the transaction a promoter or a director or proposed director of the company had any interest, direct or indirect: Provided that where the vendors or any of them are a partnership, the members of the partnership shall not be treated as separate vendors.
- (5) Particulars of the price at which any such property which is immovable property or an option over immovable property was purchased or sold within 3 years immediately before the date of the prospectus where any promoter or director had any interest, directly or indirectly, in such transaction or where any promoter or director was a member of a partnership, syndicate or other association of persons which had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of his interest; for

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 70-r73

the purposes of this subparagraph, shares of a company, the major asset of which is immovable property, shall be deemed to be immovable property.

**70. Amounts paid or payable to promoters**

The amount paid within the preceding 2 years or proposed to be paid to any promoter, or to any partnership, syndicate or other association of which that promoter is or was a member, and the consideration for that payment, and any other benefit given to the promoter, partnership, syndicate or other association within the same period or proposed to be given, and the consideration for the giving of that benefit, and the promoter's name and address.

**71. Commissions paid or payable in respect of underwriting**

The amount, if any, or the nature and extent of any consideration, paid within the preceding 2 years, or payable as Commission to any person (including Commission so paid or payable to any sub-underwriter who is a promoter or director or officer of the company) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the company, the name, occupation and business address of each such person, particulars of the amounts underwritten or sub-underwritten by each and the rate of the Commission payable for such underwriting or sub-underwriting agreement with such person; and if such person is a company, the names of the directors of such company and the nature and extent of any interest, direct or indirect, in such company of any promoter, director or officer of the company in respect of which the prospectus is issued.

**72. Preliminary expenses and issue expenses**

The amount or estimated amount of preliminary expenses, if incurred within 2 years of the date of the prospectus, and the persons by whom any of those expenses were paid or are payable, and the amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses were paid or are payable.

**73. Material contracts**

- (1) The dates and the nature of, and the parties to, every material agreement entered into by the company or its subsidiary, other than -
  - (a) agreements entered into in the ordinary course of the business carried on or proposed to be carried on by the company or its subsidiary; or
  - (b) an agreement entered into more than 2 years before the date of the prospectus.
- (2) A brief summary of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company and its subsidiary.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 74-r77

**74. Interest of directors and promoters**

- (1) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the promotion of the company and in any property proposed to be acquired by the company out of the proceeds of the issue, and where the interest of such director or promoter consists in being a member of a partnership, company, syndicate or other association of persons, the nature and extent of the interest of such partnership, company, syndicate or other association, and the nature and extent of such director's or promoter's interest in the partnership, company, syndicate or other association.
- (2) Full particulars of the nature and extent of any material interest, direct or indirect, of every director or promoter in the property acquired or proposed to be acquired by the company or its subsidiary during the 3 years preceding the date of the prospectus.
- (3) A statement of all sums paid or agreed to be paid within the 3 years preceding the date of the prospectus to any director or to any company in which he is beneficially interested or of which he is a director, or to any partnership, syndicate or other association of which he is a member, in cash or shares or otherwise, by any person either to induce him to become or to qualify him as a director, or otherwise for services rendered by him or by the company, partnership, syndicate or other association in connection with the promotion or formation of the company.

**II – Information about the offered securities**

**75. Purpose of the offer**

A statement of the purpose of the offer giving reasons why it is considered necessary for the company to raise the capital offered, and if the capital offered is more than the amount of the minimum subscription referred to in Regulation 80, the reasons for the difference between the capital offered and that minimum subscription.

**76. Time and date of the opening and of the closing of the offer**

The time and date of the opening and of the closing of the subscription lists or of the offer.

**77. Particulars of the offer**

- (1) Particulars of the securities offered, including-
  - (a) the class of securities;
  - (b) the number of securities offered;
  - (c) the issue price;
  - (d) if any securities are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property; and

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C - Items required to be included in a Prospectus

Regulation 78

- 
- (e) other conditions of the offer.
- (2) If, during the 5 years immediately preceding the date of the prospectus, the company issued any securities, the prospectus must include a statement setting out -
- (a) the dates of issue of those securities;
  - (b) the price at which they were issued; and
  - (c) and the reasons for any differentiation between those prices and the issue price of the securities being offered by the prospectus.
- (3) If, during the 5 years immediately preceding the effective date, the company issued any securities for a premium, the prospectus must include a statement setting out -
- (a) the dates of issue of those securities;
  - (b) the reasons for any such premium;
  - (c) the reasons for any differentiation between the amounts of any such premium; and
  - (d) how any such premium was be dealt with.

**78. Minimum subscription**

- (1) The minimum amount which, in the opinion of the directors, must be raised by the issue of the shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required to be provided, in respect of each of the following matters:
- (a) The purchase price of any property purchased or to be purchased, if any part of the purchase price is to be defrayed out of the proceeds of the issue;
  - (b) any preliminary expenses payable by the company, and any Commission payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares of the company;
  - (c) the repayment of any moneys borrowed by the company and its subsidiary in respect of any of the foregoing matters;
  - (d) working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
  - (e) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case; and

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 79-r82

- (f) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

**III – Statements and Reports relating to the Offer**

**79. Statement as to adequacy of capital**

A statement by the directors of the company either –

- (a) that, in their opinion, the issued capital of the company (including the amount to be raised in pursuance of this offer) is adequate for the purposes of the business of the company and of its subsidiary, if any for at least 12 months from the date of the prospectus; or
- (b) if they are of the opinion that the capital of the company as contemplated in paragraph (a) is inadequate, setting out the extent of the inadequacy and the manner in which, and the sources from which, the company and its subsidiary are financed, or are proposed to be financed.

**80. Report by directors as to material changes**

A report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary which may have taken place between the last date to which the annual financial statements of the company or any subsidiary, as the case may be, were made out, and the date of the prospectus.

**81. Statement as to listing on stock exchange**

A statement as to whether or not an application has been made for a listing of the shares offered and, if so, the name of the relevant exchange.

**82. Report by auditor of company**

- (1) A report by the auditor of the company with respect to-
  - (a) profits or losses and assets and liabilities, in accordance with sub-regulations (2) or (3), as applicable; and
  - (b) the rates of the dividends, if any, paid by the company in respect of each class of securities of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus, giving particulars of –
    - (i) each class of shares on which dividends were paid; and
    - (ii) the cases in which no dividends were paid in respect of a particular class of shares in respect of any of those years; and

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

## Regulation 82

- 
- (c) if no annual financial statements were made out by or for the company in respect of any part of the 5 years ending on a date 3 months before the issue of the prospectus, a statement of that fact.
- (2) If the company has no subsidiary, the report -
- (a) in regard to profits or losses, must deal with the profits or losses of the company in respect of each of the 5 financial years immediately preceding the issue of the prospectus; and
- (b) in regard to assets and liabilities, must deal with the assets and liabilities of the company at the last date to which the annual financial statements of the company were made out.
- (3) If the company has a subsidiary, the report -
- (a) in regard to profits or losses, must deal separately with the company's profits or losses as provided by sub-regulation (2), and in addition, must deal-
- (i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern holders of the company's securities; or
- (ii) individually with the profits or losses of each subsidiary, so far as they concern holders of the company's securities; or
- (iii) as a whole with the consolidated profits or losses of the group of companies so far as concerns holders of the company's securities; and
- (b) in regard to assets and liabilities, must deal separately with the company's assets and liabilities as provided by sub-regulation (2) and, in addition, must deal-
- (i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interest therein of holders of the company's securities, other than the company; or
- (ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of shareholders other than the company; or
- (iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of shareholders other than the company;
- (c) if a subsidiary incurred losses, must state the amounts of those losses and the manner in which provision was made for them.
- (4) The auditor must be satisfied, as far as reasonably practicable, that, except as stated in the report-

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C – Items required to be included in a Prospectus

Regulation 83-r84

- (a) the debtors and creditors do not include any accounts other than trade accounts;
- (b) the provisions for doubtful debts are adequate;
- (c) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
- (d) intercompany profits in the group have been eliminated;
- (e) there have been no material changes in the assets and liabilities of the company and of any subsidiary since the date of the last annual financial statements.

**83. Report by auditor where business undertaking to be acquired**

If the proceeds, or any part of the proceeds, of the issue of the shares or any other funds are to be applied directly or indirectly in the purchase of any business undertaking, a report made by an auditor named in the prospectus on-

- (a) the profits or losses of the business undertaking in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

**84. Report by auditor where company will acquire a subsidiary**

(1) If the proceeds or any part of the proceeds of the issue of the shares are to be applied, directly or indirectly, in any manner resulting in the acquisition by the company or its subsidiary of securities of any other juristic person by reason of which or of anything to be done in consequence thereof or in connection therewith, that juristic person will become a subsidiary of the company, a report made by an auditor named in the prospectus on-

- (a) the profits or losses of the other juristic person in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the other juristic person at the last date to which the annual financial statements of the juristic person were made out.

(2) The report must-

- (a) indicate how the profits or losses of the other juristic person dealt with by the report would, in respect of the shares to be acquired, have concerned shareholders of the company and what allowance would have fallen to be made, in respect of assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C -- Items required to be included in a Prospectus

## Regulation 85

- 
- (b) where the other juristic person has a subsidiary, or, had it been a company in terms of the Act, would have had a subsidiary, deal with the profits or losses and the assets and liabilities of the juristic person and its subsidiary and such other juristic person as would have been its subsidiary if it had been a company in terms of the Act, in the manner provided by Regulation 84 (3) in relation to the company and its subsidiary.

**85. Requirements for prospectus of mining company**

- (1) In this regulation, "**mining company**" includes a company that carries on or proposes to carry on mining, development or prospecting for or exploitation of any mineral resources, or that acquires or proposes to acquire any mineral rights thereto or options thereon.
- (2) A report by an expert containing information appropriate to the subject matter of the prospectus and including, if applicable-
  - (a) a statement describing briefly the geological characteristics of the occurrence;
  - (b) details of previous operations and production relevant to the workability and pay ability of the proposed mining operations;
  - (c) survey, drilling and borehole results;
  - (d) ore reserves;
  - (e) an interpretation of the information available with reference to the viability of the project.
- (3) Material information not otherwise required by Parts B, C or D of this Chapter relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including, if applicable-
  - (a) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;
  - (b) the name of the farm on and district in which each is situated;
  - (c) the area of each;
  - (d) the aggregate price or other consideration for which they were or are to be acquired;
  - (e) relevant details of any option as aforesaid.
- (4) A statement by the directors of the plans for reaching the production stage or for increasing output, including information regarding-
  - (a) shaft sinking and development;



COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part C - Items required to be included in a Prospectus

Regulation 85

---

- (b) capital expenditure for each material stage of development.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part D – Items required to be included in a Prospectus

Regulation 86

**Part D – Items required to be included in a Prospectus**

*In terms of Regulation 60 (2)(c)(ii)*

**86. Application of Part C Regulations**

If, as contemplated in Regulation 60 (2)(c)(ii), an intended offer -

- (a) relates to unlisted securities that are in all respects uniform with previously issued securities of the same company; and
- (b) is made only to existing holders of that company securities, with a right to renounce in favour of other persons

the requirements for a prospectus, as set out in Part C, listed in the first column of the following table, apply to the extent and subject to the alterations listed in the second column.

Regulation	Extent to which the Regulation applies, or alterations to the regulation
62	Only sub-regulations (1), (2) and (4) apply.
63	Only sub-regulations (1) and (6)(c) apply.
64	Only sub-regulation (2) applies, and it applies only if there has been a material change in the nature of the company's activities since it last issued an annual financial statement.
65	All of the Regulation applies
66	None of the Regulation applies
67	All of the Regulation applies
68	None of the Regulation applies
69	None of the Regulation applies
70	None of the Regulation applies
71	All of the Regulation applies
72	None of the Regulation applies
73	All of the Regulation applies
74	All of the Regulation applies, but without reference to any promoter.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 4 - Offerings of Company Securities : Part D – Items required to be included in a Prospectus

Regulation 86

75	The following provision is substituted for the regulation:  “A statement of the purpose of the offer, giving reasons why it is considered necessary to raise the capital offered.”
76	All of the Regulation applies.
77	All of the Regulation applies.
78	None of the Regulation applies.
79	None of the Regulation applies.
80	All of the Regulation applies.
81	None of the Regulation applies.
82	None of the Regulation applies.
83	All of the Regulation applies.
84	All of the Regulation applies.
85	None of the Regulation applies.

COMPANIES REGULATIONS  
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

Chapter 5 - Fundamental Transactions and Takeover Regulations : Part A – Interpretation and Application

Regulation 87

**Chapter 5 - Fundamental Transactions and Takeover Regulations****Part A – Interpretation and Application****87. Definitions**

In this Chapter, and in applying Part B and Part C of Chapter 5 of the Act, unless the context indicates otherwise –

- (a) **“circular”** means a document required to be completed in English in accordance with Part B and Part C of Chapter 5 of the Act and this Chapter, and posted to relevant holders;
- (b) **“condition as to acceptance”** means a condition of an offer, announced in the firm intention announcement, determined by an offeror as being, and relating only to, the minimum percentage level of securities required to be tendered by offeree regulated company holders in order for an offeror to be obliged to accept all tendered securities, and for purposes of clarity, shall not include a condition relating to the ability of an offeror to meet its cash consideration commitment;
- (c) **“control”** means a holding of a beneficial interest in a regulated company equal to or exceeding the specified percentage of voting rights in that regulated company;
- (d) **“controlled company”** means a regulated company which is controlled, directly or indirectly, by its pyramid;
- (e) **“dealings”** means acquisitions, disposals, subscriptions, grants and issues of securities, however effected;
- (f) **“fair and reasonable opinion”** means the opinion expressed by an independent expert on the fairness and reasonableness of an offer consideration, taking account of value and price, given to either -
  - (i) an independent board of an offeree regulated company; or
  - (ii) to an independent board of an offeror company, where required;
- (g) **“independent”** or **“acts independently”** means a person who has no conflict of interest and is able to make impartial decisions without fear or favour in relation to an offer;
- (h) **“independent board”** means those directors of an offeree regulated company declared or determined to be independent directors;
- (i) **“independent board of an offeror company”** means those directors of an offeror company declared or determined to be independent directors;