
GENERAL NOTICE

NOTICE 336 OF 2006

DEPARTMENT OF TRADE AND INDUSTRY SCHEDULE 3 OF THE COMPANIES ACTS, 1973 (ACT 61 OF 1973)

NOTICE OF INTENTION TO AMEND SCHEDULE 3 OF THE COMPANIES ACT, 1973

The Interim Companies Amendment Bill was published in **July 2005** ~~for~~ public comment and has been finalized pursuant to public consultation. There is a need for consequential amendments to the 3rd schedule of the Companies Act, **1973** ~~to~~ give effect to the Interim Companies Amendment Bill. The 3rd schedule specifies the form and content of a prospectus. Both the detail and scope of the information required in a prospectus have been extended.

The 3rd schedule, as amended, is hereby published for comment.

Interested persons are invited to forward their written comments or submissions to Mr. Netshitenzhe, Director of Commercial Law and Policy, ~~fax~~ number 012-394 2506 or P/bag **X84**, Pretoria, 0001 or e-mail McDonaldN@thedti.gov.za and must reach him within thirty (30) days from publication of this Notice.

ASTRID LUDIN

DEPUTY DIRECTOR –GENERAL

Schedule 3

REQUIREMENTS FOR PROSPECTUS

[Schedule 3 substituted by Proclamation ** of ** 2005.1

GENERAL REQUIREMENTS & INTERPRETATION

1. Requirements for registration of a prospectus

- I.1. An application for the registration of a prospectus must satisfy the requirements of the Act and of this schedule.
- 1.2. Parts 1 and 2 of this schedule contain alternative requirements, depending on the nature of the proposed offer:
 - (a) If the offer is to be restricted to existing members or debenture holders of the issuer (even if their rights to subscribe may be renounced in favour of other persons), and the shares to be offered (i) will not be listed on an exchange, and (ii) confer rights identical to shares previously issued, the prospectus must contain the information set out in Part 1.
 - (b) In all other cases, the prospectus must contain the information set out in Part 2.
- 1.3. If the applicant is not the issuer of the securities, the prospectus must further state -
 - (a) the net amount received or payable to the issuer in respect of the shares;
 - (b) a place and times at which the contract of allotment may be inspected.
- 1.4. In so far as information relating to the business or affairs of a related corporation is relevant or material, any information required by this schedule in respect of the issuer must also be provided for the related corporation.
- I.5. Where information is required for a specified period in respect of a corporation or business undertaking which has been operating for a lesser period, the information may be given for that lesser period.
- 1.6. In addition to the requirements of **Parts 1 or 2, as applicable**, the prospectus must include the reports required under Part 3.

2. Accounting policies affecting financial information

- 2.1. Where the applicant is required to provide financial information in respect of an accounting period of a corporation for which audited financial statements have not been produced, the applicant must disclose – separately for each such period – all material accounting policies, estimates and assumptions affecting the information.
- 2.2. For any other accounting period, if the audited financial statements **do** not disclose all material accounting policies, estimates and assumptions relevant to the information provided, the applicant must provide a comprehensive disclosure.

3. Form, dating and certification

- 3.1. The information required must be set out under the paragraph headings used in Parts 1 and 2, as applicable, and printed as conspicuously as any other information contained in the prospectus.
- 3.2. The prospectus must include a list of **all** the requirements that were not adhered to and state the reason in each case. State specifically whether the requirement was (i) considered not applicable, or (ii) dispensed with under section 148A of the Act.
- 3.3. General matter should be presented in narrative form and statistical matter in tabular form.
- 3.4. The title page of the prospectus must state,
 - (a) that it has been registered in terms of the Act ;
 - (b) the date of issue (being the date of application referred to in paragraph 3.7); and
 - (c) if the company has changed its name in the **last** three years, the old name in bold type under the existing name.
- 3.5. An application by an issuer wishing to offer its own shares must be signed by every person named in the prospectus as a director or prospective director of the issuer.
- 3.6. All other applications must be signed by the person wishing to offer the shares. If that person is a company, it should be signed by two of its directors, and if a partnership, by at least half the partners.
- 3.7. Every signature to the application must be dated, and the most recent of these dates will be the date of application.
- 3.8. Every director and prospective director of the issuer named in the prospectus must certify in the prospectus that, to the best of his or her knowledge, individually and collectively, no facts have been omitted that would render any statement false or misleading, that **all** reasonable enquiries have been made to ascertain the facts, that the prospectus contains all the information required **by law** and that any information more than 6 months old is a fair representation of the position at the date of application.

4. Written consents and other documents to be attached to the application

- 4.1. The applicant must attach copies of the resolutions, authorisations and approvals by which the securities have been or will be created and issued.
- 4.2. If the prospectus refers to or quotes an expert, or refers to a bank, auditor, attorney, sponsor or other adviser, the application must include the signed permission of that person, stating also whether or not that person accepts responsibility for any of the information in the prospectus, and, if so, which information.
- 4.3. The application must include a copy of every material contract entered into in the past 3 years and, if a material obligation or settlement is yet to be performed under any earlier contract, then also of any such earlier contract.
- 4.4. If a material contract mentioned in 4.3 is not:
 - (a) in one of the official languages of the Republic, include a certified English translation of the contract;

- (b) in writing, include a written summary of the contract, signed by *two* directors of the issuer.
- 4.5. The application must include a copy of directors' returns lodged in terms of section 216 (2) of the Act.
- 4.6. If the prospectus states that any part of the offer is underwritten, the application must include:
 - (a) a copy of the underwriting agreement; and
 - (b) a sworn declaration by the person named as underwriter, or *two* of its directors if the person is a company, stating:
 - (i) that it will be able to carry out its obligations even if no shares are subscribed for; and
 - (ii) any amounts payable in terms of the agreement, as well as the basis for calculating any commissions and contingent payments.
- 4.7. The application must include proof of the authority of anyone who has signed as an agent for any person required to sign the prospectus, a consent or attachment.

5. Interpretation

- 5.1. In this schedule,
 - (a) 'address' means the principal place of business of a corporation or the business address of a natural persons and, in addition to these, a postal address if different to the other address;
 - (b) 'associate' means a corporation in which the issuer owns an interest of 20% or more, or exercises control to the extent of 20% or more;
 - (c) 'auditor' means a registered auditor under the Auditing Profession Act (Act 26 of 2005) who is not a director, officer or employee of the issuer or of any related corporation;
 - (d) '*corporation*' means a company, close corporation, partnership, joint venture, syndicate or other association which either trades or owns assets distinctly from its members;
 - (e) 'issuer' means the corporation in which shares are to be offered and includes, where applicable, any related corporation referred to in 1.4;
 - (f) 'listed' means included in the list of securities kept by an exchange in terms of section 12 of the Securities Services Act, 2005;
 - (g) 'material contract' means any contract which may affect a decision to acquire shares in the issuer, including agreements relating to franchise or intellectual property rights, but excluding any routine contract relating to the ordinary business of the issuer or its subsidiary;
 - (h) '*name*' and '*names*' in the case of a natural person, means his or her full name, and in case of a legal person, its registered name;
 - (i) 'property' except in Addendum B to Part 2, includes movable and immovable property and an interest or shares in a corporation;
 - (j) 'related corporation' means a holding company, subsidiary or associate of the issuer, and any other corporation in which the issuer has a material interest;

- (k) *'relevant'* or *'material'* in relation to any event, benefit or information means relevant or material to an investor's decision to acquire the securities offered, or to an investor's valuation of those securities (in relation to both the assets and profitability of the issuer), and
- (i) with regard to any matter pertaining to corporate governance and fiduciary duties of any person, means any factor that may impact on the corporation's reputation, or lead to an inference of impropriety or dishonesty;
 - (ii) with regard to a benefit derived by a promoter or officer of the issuer, directly or indirectly, from or through its dealings with a corporation, means any such benefit;
 - (iii) with regard to assets and liabilities, means anything that might affect the value of the security by 5 per cent or more;
 - (iv) with regard to profitability, means anything that might affect the value of the security by 10 per cent or more; and
 - (v) with regard to cash flow, means any factor that might distort the flow of funds;
- and includes any other factor that poses a risk or opportunity to the corporation that might have any of the impacts or effects previously mentioned within the next five years.
- (l) *'securifies'* means shares as defined in relation to "an offer of shares for subscription or sale" in section 1 of the Act;
- (m) *'seller'* includes, where appropriate, the lessor of any leased property; and
- (n) *'the Act'* means the Companies Act, 1973, as amended.
- 5.2. The terms *'articles'*, *'director'*, *'holding company'*, *'manager'*, *'secretary'*, *'share'*, and *'wholly owned subsidiary'* as defined in section 1, and *'expert'*, *'offer'*, and *'promoter'* as defined in section 142 of the Act, have the same meaning in this schedule.
- 5.3. Where historical information is required,
- (a) "the last three years" means a consecutive period of at least 35 months,
 - (i) comprised of the most recent accounting periods for which financial statements have been issued, or
 - (ii) if in relation to business for which financial statements are not issued, to the most recent accounting or business periods; and
 - (b) a reference to any other number of years must be interpreted in the same way.

PART 1

A prospectus required to comply with Part 1 must provide the following information:

GENERAL INFORMATION ABOUT THE ISSUER, ITS OFFICERS, MEMBERS AND PROMOTER

6. Name, address and incorporation

- 6.1. State the name and address of the registered office and of the transfer office, and the date of incorporation of the issuer and, if it is an external company, the country in which it is incorporated and the date of registration in the Republic.
- 6.2. If the issuer is a subsidiary, state the name and address of the registered office of its holding company, or of any corporation which would have been its holding company, had it been registered under the Act.

7. Directors, managers and other members

- 7.1. State the names, any former names, occupations and addresses of each of the following persons, and a brief description of their principal activities in relation to the issuer or its subsidiaries, whether as an **officer** of these or otherwise –
 - (a) directors of the issuer and its material subsidiaries;
 - (b) founders, if the issuer has been established for fewer than five years;
 - (c) executive managers of the issuer and its material subsidiaries and managers responsible for the day to day running of the business of the issuer or of a group to which the issuer belongs; and
 - (d) in the case of an issuer registered in a jurisdiction other than South Africa, members of the issuer's domestic management committee.
- 7.2. State for each of the persons mentioned in 7.1 ("officers") –
 - (a) his or her job title;
 - (b) his or her nationality;
 - (c) his or her qualifications and experience;
 - (d) remuneration and other benefits derived directly or indirectly from the issuer or a related corporation;
 - (e) the names of all companies and partnerships of which the officer has been a director or partner at any time in the last five years, but excluding subsidiaries of any such company, indicating whether or not the officer is still a director or partner;
 - (f) corporations in which the **officer** owns an interest of 20% or more, has the right to an interest of 20% or more, or is entitled to 20% or more of the profits or benefits (including interest payments);
 - (g) details of any bankruptcies, insolvencies or individual voluntary compromise arrangements;
 - (h) details of any receiverships, compulsory liquidations, creditor voluntary liquidations, administrations, company voluntary arrangements or any compromise or arrangement with creditors generally, or any class of creditor, of any company of which the officer is or was a director with an executive function at the time of or in the twelve months preceding any such event;
 - (i) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships of which the officer is or was a partner at the time of or in the 12 months preceding the event;

- (j) details of receiverships of any asset of the officer or of a partnership of which the officer is or was a partner at the time of or in the 12 months preceding the event;
- (k) details of any public criticisms of the officer by statutory or regulatory authorities, or recognised professional bodies, and whether the officer has ever been disqualified by a court from acting as a director of a company or from acting in the management or on behalf of any company; and
- (l) any offence involving dishonesty.

8. Directors' interest in shares

- 8.1.** Show the direct and indirect interests of the directors in the share capital of the issuer, with a distinction between beneficial and non-beneficial interests.
- 8.2.** State whether or not there has been a change in these interests from the end of the previous financial year to the date of application.

9. Interest of directors and promoters

- 9.1.** Provide full particulars of the nature and extent of any material interest of a director or promoter in any transaction effected by the issuer or a related corporation in the past three years.
- 9.2.** Provide full particulars of the nature and extent of any material interest of the directors and promoter in the promotion of the issuer and in any property intended to be acquired by the issuer or its subsidiary out of the proceeds of the issue.
- 9.3.** If a director or promoter's interest as described in **9.1** or **9.2** is through an intermediary, state the nature and extent of the intermediary's interest and the nature and extent of the director or promoter's interest in that intermediary.
- 9.4.** Provide a statement of amounts or inducements paid or agreed to be paid by any person within the past three years for any director to serve as a director, or for services rendered by the director or an intermediary in the promotion or formation of the issuer.

10. Secretary

- 10.1.** Provide the name, address and professional qualifications of the secretary of the issuer.

11. Material contracts

- 11.1.** State the dates, the nature of and the parties to, every material contract mentioned in 4.3, and provide details of a reasonable time and place at which copies of these contracts, or of any transcript or translation, may be inspected.

THE OFFER AND ITS PROCEEDS

12. Particulars of the offer

- 12.1.** Provide at least the following particulars of the shares offered;
 - (a) the class of shares;

- (b) the nominal value of the shares, if applicable;
 - (c) the number of shares offered;
 - (d) the offer price;
 - (e) how the shares rank for dividend and whether they rank *pari passu* with existing shares of the same class;
 - (9) the time, if any, after which a right to dividends lapses, and the person in whose favour it lapses;
 - (g) the fixed dates, if any, on which a right to dividends arises;
 - (h) any arrangement by which future dividends are or may be waived or agreed to be waived;
 - (i) any provisions relating to transferability, convertibility or redemption;
 - (j) the treatment of fractions; and
 - (k) any other terms and conditions of the offer.
- 12.2. Provide at least the following particulars for debentures offered:
- (a) the class of debentures;
 - (b) the terms and conditions of the debentures;
 - (c) the fixed dates, if any, on which a right to interest arises;
 - (d) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property;
 - (e) if the debentures are offered with a guaranty, particulars of the guarantor.
 - (f) any provisions relating to transferability, convertibility or redemption; and
 - (g) any other terms and conditions of the offer.

13. Time and date of the opening and of the closing of the offer

- 13.1. State the time and date of the opening and of the closing of the subscription lists or the offer.

14. Purpose of the offer

- 14.1. Provide a statement of the purpose of the offer, explaining if applicable why it is considered necessary for the issuer to raise the capital offered.
- 14.2. If any part of the proceeds of the issue of shares is to be used by the issuer or its subsidiary, directly or indirectly, to acquire property, state:
- (a) the date of the acquisition or proposed acquisition;
 - (b) the purchase amount, specifying the portion settled by the issue of shares, the payment of cash and other means, and how any outstanding amount is to be settled;
 - (c) details of the valuation of the property;
 - (d) any goodwill payment and how the goodwill was or will be accounted for;
 - (e) any loans incurred, or to be incurred, to finance the acquisition;
 - (9) the nature of the title or interest acquired or to be acquired.
- 14.3. If any part of the proceeds of the issue of shares is to be applied, directly or indirectly, to the acquisition by the issuer or its subsidiary of the shares of any other corporation, in consequence of which that corporation will become a subsidiary or material investment of the issuer, provide in addition:

- (a) an assessment of the principal risks associated with the acquisition, including risks related to the corporation's:
 - (i) operating history;
 - (ii) profitability;
 - (iii) industry, business or proposed business, competitor activity and business environment;
 - (iv) labour relations, staff redundancies and compliance with employment equity targets; and
 - (v) the market for its securities.
 - (b) a report as described in paragraph 71.
- 14.4.** If any part of the proceeds of the issue of shares is to be used by the issuer or its subsidiary, directly or indirectly, to acquire a business undertaking, provide in addition:
- (a) an assessment of the principal risks associated with the acquisition, including risks related to the -
 - (i) operating history of the business;
 - (ii) its profitability; and
 - (iii) its nature, competitor activity and the business environment.
 - (b) a report as described in paragraph 72.
- 14.5.** State in respect of the sellers of the acquisitions described above:
- (a) their names and addresses;
 - (b) the amount paid or payable in cash or securities to each of them;
 - (c) the amount (if any) payable for goodwill or items of a similar nature;
 - (d) the date on which the asset was acquired by the seller, and if within the past three years, the cost of the asset to the seller; and
 - (e) if the seller is a company, the names and addresses of the controlling shareholders of the seller.
- 14.6.** State whether or not the sellers have guaranteed the book debts or other assets and describe any warranties that have been given.
- 14.7.** State whether the seller's agreement precludes the seller from carrying on business in competition with the issuer or any of its subsidiaries; or imposes any other restriction on the seller, providing details of any payment relating to a restraint of trade and the nature of the restraint.
- 14.8.** State how any liability for accrued taxation, or any apportionment of it to the date of acquisition, is to be settled in terms of the seller's agreement.

15. Commissions paid or payable in respect of underwriting

- 15.1.** State the commission paid within the preceding three years, or to become payable to any person (including a promoter, director, officer or holding company of the issuer) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the issuer, listing the name, occupation and address of each such person, the amounts underwritten or sub-underwritten by each of them and the rate of the commission payable for the underwriting or sub-underwriting contract with each of them.
- 15.2.** If an underwriter or sub-underwriter is a company, state the names of the directors of the company and the nature and extent of any direct or

indirect interest which any promoter, director or officer of the issuer might have in that company.

16. Statement where an offer is not underwritten

16.1. If the offer is not underwritten, include a statement by the directors of the manner in and source from which any shortfall in the capital to be raised will be financed.

THE ISSUER'S SHARE CAPITAL AND OTHER LIABILITIES

17. Share capital of the issuer

17.1. If the issuer's share capital consists of shares of par value, state:

- (a) the authorised and issued share capital (or share capital agreed to be issued), specifying:
 - (i) the different classes of shares;
 - (ii) the number of shares in each class;
 - (iii) the nominal value of each share in each class;
 - (iv) the total value of each class; and
- (b) the share premium account.

17.2. If the issuer's share capital consists of shares of no par value, specify with regard to the authorised and stated capital, (or stated capital agreed to be issued):

- (i) the different classes of shares;
- (ii) the number of shares in each class; and
- (iii) the total value of the stated capital account for each class.

17.3. Give a description for each class of shares of:

- (a) preferential conversion and exchange rights;
- (b) voting rights;
- (c) rights to dividends, profits, capital and any other rights, including redemption rights and rights on liquidation or distribution of capital assets.

17.4. State what consent and procedures are required for the variation of rights attaching to shares.

17.5. Provide a summary of other issues or offers of shares in the issuer and its subsidiaries during the last three years, stating:

- (a) the prices and terms at which the shares were issued or offered;
- (b) by whom the offers were made;
- (c) the number of shares allotted in pursuance of any issue or offer;
- (d) whether the shares were issued to all who were holders of shares at that time in proportion to their holdings or, if not, to whom they were issued, the reasons why the shares were so issued and the basis of allotment of the shares;
- (e) the dates of the issues or offers;
- (f) the reasons for any premium or discount on the issue or offer, how any premium or discount was dealt with and where some shares were issued or offered at par and others at varying premiums or discounts the reasons for the differential;
- (g) the value and description of the property, if any, acquired or to be acquired out of the proceeds of the issue or offer; and

- (h) the details of any share repurchases.
- 17.6. Provide a summary of any consolidations or sub-divisions of shares in the issuer during the preceding three years.
- 17.7. State whether the directors or shareholders in general meeting control the issue or disposal of the authorised but un-issued shares.
- 17.8. Give the number of any founders', managers' or deferred shares and any special rights attaching to them.

18. Material loans and debentures

- 18.1. Provide details of material loans to the issuer and its subsidiaries, including debentures issued prior to the offer and preference shares classified as debt in terms of financial reporting standards, stating for each of them:
 - (a) whether the loan is secured or unsecured;
 - (b) the name of the lender or debenture-holder;
 - (c) the amount, terms and conditions of repayment or renewal;
 - (d) the nominal and real rates of interest on each loan;
 - (e) details of any security provided;
 - (f) details of any conversion or redemption rights;
 - (g) how payments due within the next 12 months will be financed.
- 18.2. State whether any debentures have been:
 - (a) created in terms of a trust deed and the number and value to be issued or agreed to be issued;
 - (b) issued by way of conversion or replacement of debentures previously issued, noting any difference between the security for the new debenture and that for the one substituted.

19. Options or preferential rights in respect of shares

- 19.1. Fully disclose the substance of any contract or arrangement, or proposed contract or arrangement, 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 issuer or its subsidiary, specifying in respect of each of these:
 - (a) the number and description of shares subject to the option or right;
 - (b) the period during which it may be exercised;
 - (c) the exercise date;
 - (d) the exercise or strike price, or price to be paid for the shares subscribed for;
 - (e) the nature of the option;
 - (f) the option premium or consideration paid or payable for it;
 - (g) the names and addresses of beneficiaries (other than current participants under an employee share scheme); and
 - (h) any other material fact or circumstance concerning the granting of the right or option.
- 19.2. Subscribing for shares includes, for the purpose of paragraph 15.1, 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.

20. [Open paragraph]

PART 2

A prospectus required to comply with Part 2 must provide the following information:

GENERAL INFORMATION ABOUT THE ISSUER, ITS OFFICERS, MEMBERS AND ADVISORS

21. Name, address and incorporation

- 21.1. State the name and address of the registered office and of the transfer office, and the date of incorporation of the issuer and, if it is an external company, the country in which it is incorporated and its date of registration in the Republic.
- 21.2. If the issuer is a subsidiary, state the name and address of the registered office of its holding company, or of any corporation which would have been its holding company, had it been registered under the Act.

22. Current shareholders

- 22.1. Provide the names of the controlling shareholders of the issuer and details of any anticipated change in controlling shareholders due to the offer.
- 22.2. Provide the names of other persons known to have a beneficial interest in the issuer of 5% or more, comprised of any class of the issuer's capital, whether held directly or indirectly, and state as a percentage of the issuer's total share-capital, the respective beneficial interest of each of these persons.

23. Directors, managers and other members

- 23.1. State the names, any former names, occupations and addresses of each of the following persons, and a brief description of their principal activities in relation to the issuer or its subsidiaries, whether as an officer of these or otherwise –
- (a) directors of the issuer and its material subsidiaries;
 - (b) founders, if the issuer has been established for fewer than five years;
 - (c) executive managers of the issuer and its material subsidiaries and managers responsible for the day to day running of the business of the issuer or of a group to which the issuer belongs; and
 - (d) in the case of an issuer registered in a jurisdiction other than South Africa, members of the issuer's domestic management committee.
- 23.2. State for each of the directors, managers and members mentioned in 23.1 ("officers") –
- (a) his or her job title;
 - (b) his or her nationality;
 - (c) his or her qualifications and experience;
 - (d) the names of all companies and partnerships of which the officer has been a director or partner at any time in the previous five

- years, but excluding subsidiaries of any such company, indicating whether or not the officer is still a director or partner:
- (e) corporations in which the officer owns an interest of 20% or more, has the right to an interest of 20% or more, or is entitled to 20% or more of the profits or benefits (including interest payments);
 - (f) details of any bankruptcies, insolvencies or individual voluntary compromise arrangements;
 - (g) details of any receiverships, compulsory liquidations, creditor voluntary liquidations, administrations, company voluntary arrangements or any compromise or arrangement with creditors generally or any class of creditors of any company of which the officer is or was a director with an executive function at the time of or within the twelve months preceding any such event;
 - (h) details of any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships of which the officer is or was a partner at the time of or within the 12 months preceding the event;
 - (i) details of receiverships of any **asset(s)** of the officer or of a partnership of which the officer is or was a partner at the time of or within the 12 months preceding the event;
 - (j) details of any public criticisms of the officer by statutory or regulatory authorities, or recognised professional bodies, and whether the officer has ever been disqualified by a court from acting as a director of a company or from acting in the management or on behalf of any company; and
 - (k) any offence involving dishonesty.
- 23.3. Specify the term of office for which each director has been or will be appointed, whether it be as executive or non-executive, the manner in and terms on which any proposed director will be appointed and particulars of any right held by any person relating to the appointment of a director.
- 23.4. Provide a summary of the provisions of the articles of association or other corresponding document of the issuer and each of its subsidiaries relating to:
- (a) qualifications prescribed for directors;
 - (b) remuneration of directors: and
 - (c) retirement or non-retirement of directors with reference to an age limit.
- 23.5. Provide a summary of the provisions of the articles of association or other corresponding document of the issuer and each of its subsidiaries conferring on directors:
- (a) any power to vote on a proposal, arrangement or contract in which they are materially interested; and
 - (b) any power, in the absence of an independent quorum, to vote remuneration, including pension or other benefits, to themselves or any members of their board.
- 23.6. For each director or proposed director, state in aggregate for the last financial period of the issuer, such amount paid, accrued or proposed to be paid -

- (a) in respect of:
 - (i) fees for services as a director;
 - (ii) management, consulting, technical or other fees paid for services rendered, directly or indirectly, including payments to management companies, a part of which is paid or to be paid to the director;
 - (iii) basic salary;
 - (iv) bonuses and performance-related payments;
 - (v) sums paid by way of an expense allowance;
 - (vi) any other material benefits;
 - (vii) contributions paid under any pension scheme;
 - (viii) any commission, gain or profit-sharing arrangement; and
 - (b) in respect of share option agreements or any other right to subscribe for shares ("share options"), stating also:
 - (i) the opening balance, including the number of share options at each different strike price;
 - (ii) the number of share options awarded and their strike prices;
 - (iii) the strike dates of differing lots of options awarded;
 - (iv) the number of share options exercised and at what prices; and
 - (v) the closing balance of share options, including the number of share options at each different strike price.
 - (c) in respect of any shares issued and allotted under an employee share scheme (or any other scheme effected through a trust or outside of the issuer which achieves substantially the same objectives as an employee share scheme), which have not been fully paid for, including the number issued and allotted, the price of issue and allotment, the release periods applicable to the shares and any other relevant information.
- 23.7. Directors' emoluments as disclosed under 23.6 (a) to (c), must include and specify amounts received or receivable from:
- (a) the issuer's holding company;
 - (b) the issuer's subsidiaries and fellow subsidiaries;
 - (c) associates of the entities mentioned in (a) and (b) above;
 - (d) joint ventures of the issuer or of the entities mentioned in (a) to (c) above; and
 - (e) entities that provide management or advisory services to the issuer or any of the entities mentioned in (a) to (d) above.
- 23.8. Directors' emoluments as disclosed under 23.6 (a) to (c), must include amounts paid, accrued as payable or to be paid to a third party in lieu of directors' emoluments.
- 23.9. State whether or not the remuneration of any officer of the issuer will be varied as a consequence of the capital raised or any other transaction, giving full particulars of the aggregate variation.
- 23.10. If the business of the issuer or its subsidiary or any part thereof is managed or if it is proposed that it be managed by a third party under a contract, state the name and address of the third party and a description of the business so managed or to be managed, the consideration payable and any other detail which may be relevant.

24. Secretary

- 24.1. Provide the name, address and professional qualifications of the secretary of the issuer.

25. Auditor, attorney, bank, sponsor, trustee, underwriter, expert and advisor

- 25.1. Provide the name and address of the auditor, attorney, bank and sponsor of the issuer, and of any trustee, underwriter, expert or advisor referred to in the prospectus, and state for each of them any holding of shares, options or agreements to acquire shares in the issuer.

THE ISSUER'S BUSINESS AND PROSPECTS**26. History, state of affairs and prospects of issuer**

- 26.1. Give a general description of the business carried on or to be carried on by the issuer and its subsidiaries. If the issuer or its subsidiary carries on or proposes to carry on two or more businesses, provide information on the relative importance of each of the businesses that is or will be material to its profits or losses, assets employed or any other factor.
- 26.2. Disclose for the businesses described in 26.1, the degree of any government protection or investment encouragement law affecting them.
- 26.3. State the directors' opinion on the prospects of the business of the issuer and its subsidiaries or any business to be acquired, giving the grounds for the opinion and other relevant information.
- 26.4. Set out the general history of the issuer and its subsidiaries stating at least:
- (a) the length of time for which the business of the issuer and of any subsidiary has been carried on;
 - (b) the name, date and place of incorporation and the registration number and issued or stated capital of each subsidiary, with details of the securities held by the issuer, stating also the main business of the subsidiary and the date on which it became a subsidiary;
 - (c) brief particulars of any alteration of the issuer's capital during the last three years;
 - (d) the date of conversion into a public company.
- 26.5. Provide an assessment of the principal risks associated with the issuer, including risks related to it's -
- (i) operating history;
 - (ii) profitability;
 - (iii) industry, business or proposed business, competitor activity and the business environment;
 - (iv) labour relations, staff redundancies and compliance with employee equity targets; and
 - (v) the marketability of its securities.
- 26.6. Provide details of any material change in the business of the issuer during the past five years.

- 26.7. Provide the history of any change in the last five years, or proposed change:
- (a) in controlling shareholder(s);
 - (b) of trading objects of the issuer and its subsidiaries, including a statement of any new trading objects and how they will be implemented;
 - (c) in the name of the issuer, giving the reasons for the change and whether or not the Registrar has consented to the change.
- 26.8. State the situation, area and tenure of the principal immovable property held or occupied by the issuer and its subsidiaries (including in the case of leasehold property, the rental and unexpired term of the lease).
- 26.9. For the issuer and each subsidiary, in respect of each of the preceding five years, state particulars of:
- (i) the profits or losses before and after tax;
 - (ii) the dividends paid;
 - (iii) the dividends paid in cents per share; and
 - (iv) the dividend cover for each year.
- 26.10. For a holding company, provide the information required under 26.9 in consolidated form.

27. Statement as to adequacy of working capital

- 27.1. State whether in the directors' opinion the available working capital of the issuer will be adequate for the purposes of the business of the issuer and its subsidiaries for at least the next 12 months.
- 27.2. Disclose the extent of any reliance in the assessment made under 27.1, on amounts to be raised:
- (a) by means of the current offer;
 - (b) by other means or from other sources.
- 27.3. If the directors consider the available working capital to be inadequate, state the extent of the inadequacy, the manner in which and sources from which the shortfall will be funded.
- 27.4. If there is any reliance on funding under 27.2(b) or 27.3, disclose the reasons for multiple sources of funding.

THE OFFER AND ITS PROCEEDS

28. Particulars of the offer

- 28.1. Provide at least the following particulars of the shares offered;
- (a) the class of shares;
 - (b) the nominal value of the shares, if applicable;
 - (c) the number of shares offered;
 - (d) the issue price;
 - (e) how the shares rank for dividend and whether they rank *pari passu* with existing shares of the same class;
 - (f) the time, if any, after which a right to dividends lapses, and the person in whose favour it lapses;
 - (g) the fixed dates, if any, on which a right to dividends arises;
 - (h) any arrangement by which future dividends are or may be waived or agreed to be waived;

- (i) any provisions relating to convertibility or redemption;
 - (j) the treatment of fractions; and
 - (k) any other terms and conditions of the offer.
- 28.2. Provide at least the following particulars for debentures offered:
- (a) the class of debentures;
 - (b) the terms and conditions of the debentures;
 - (c) the fixed dates, if any, on which a right to interest arises;
 - (d) if the debentures are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property;
 - (e) if the debentures are offered with a guaranty, particulars of the guarantor.
 - (9) any provisions relating to transferability, convertibility or redemption; and
 - (g) any other terms and conditions of the offer.

29. Time and date of the opening and closing of the offer

- 29.1. State the time and date of the opening and closing of the subscription lists or the offer.

30. Issue price

- 30.1. Give reasons for any premium or discount on any of the shares and how any premium or discount was or is to be dealt with.
- 30.2. If some shares are to be issued at a premium and other shares at par or at a lower premium, give reasons for the differential.
- 30.3. If shares of no par value are to be issued, provide the price at which they are to be issued, and the reasons for any differentiation.

31. Minimum subscription

- 31.1. State the minimum amount which, in the opinion of the directors, must be raised by the issue in order to provide the amounts required for:
- (a) any property to be purchased in whole or in part out of the proceeds of the issue;
 - (b) any preliminary expenses payable by the issuer, and any commission payable to any underwriter or sub-underwriter;
 - (c) the repayment of any moneys borrowed by the issuer 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 purpose; and
 - (e) any other material expenditure, stating its nature and purpose and the estimated amount in each case.
- 31.2. State the amounts to be paid in respect of the above items from sources other than the proceeds of the issue, and state these other sources.

32. Over subscriptions

- 32.1. State whether or not a preference on allotment will be given to any particular company or group such as employees or pension funds, providing the details and reasons.

33. Purpose of the offer

- 33.1. Provide a statement of the purpose of the offer, explaining **if** applicable why it is considered necessary for the issuer to raise the capital offered, and if the capital offered is more than the amount of the **minimum** subscription referred to in paragraph 31, the reasons for the difference between the capital offered and the minimum subscription.
- 33.2. If any part of the proceeds of the issue of shares **is** to be applied, directly or indirectly, to the acquisition by the issuer or its subsidiary of the shares of any other corporation, in consequence **of** which that corporation will become a subsidiary or material investment of the issuer, provide for that corporation -
- (a) the information required in respect of the issuer under paragraphs **26.4** to **10**;
 - (b) a report as described in paragraph **71**.
- 33.3. If any part of the proceeds of the issue of shares is to be used by the issuer or its subsidiary, directly or indirectly, to acquire a business undertaking, provide:
- (a) **an** assessment of the principal risks associated with the acquisition, including risks related to the -
 - (i) operating history of the business;
 - (ii) its profitability; and
 - (iii) its nature, competitor activity and the business environment.
 - (b) a report as described in paragraph **72**.

34. Statement as to listing on an exchange

- 34.1. State whether or not an application has been made for a listing **of** the shares offered, and give the name of the exchange to which application was made.
- 34.2. Provide the dates, if applicable and if known, on which the shares are to be admitted to listing and on which trading will commence.

**ISSUER'S SHARE CAPITAL, ASSETS AND LIABILITIES GENERALLY,
FINANCIAL POSITION AND PROFITABILITY****35. Share capital of the issuer**

- 35.1. If the issuer's share capital consists of shares of par value, state:
- (a) the authorised and issued share capital (or share capital agreed to be issued), specifying:
 - (i) the different classes of shares;
 - (ii) the number of shares in each class;
 - (iii) the nominal value of each share in each class;
 - (iv) the total value of each class; and
 - (b) the share premium account.
- 35.2. If the issuer's share capital consists of shares of no par value, specify with regard to the authorised and stated capital, (or stated capital agreed to be issued):
- (i) the different classes of shares;
 - (ii) the number of shares in each class; and

- (iii) the total value of the stated capital account for each class.
- 35.3. Give a description for each class of shares of:
- (a) preferential conversion and exchange rights;
 - (b) voting rights;
 - (c) rights to dividends, profits, capital and any other rights, including redemption rights and rights on liquidation or distribution of capital assets.
- 35.4. State what consent and procedures are required for the variation of rights attaching to shares.
- 35.5. Provide a summary of other issues or offers of shares in the issuer and its subsidiaries during the preceding three years, stating:
- (a) the prices and terms at which the shares were issued or offered;
 - (b) by whom the offers were made;
 - (c) the number of shares allotted in pursuance of any issue or offer;
 - (d) whether the shares were issued to all who were holders of shares at that time in proportion to their holdings or, if not, to whom they were issued, the reasons why the shares were so issued and the basis of allotment of the shares;
 - (e) the dates of the issues or offers;
 - (f) the reasons for any premium or discount on the issue or offer, how any premium or discount was dealt with and where some shares were issued or offered at par and others at varying premiums or discounts the reasons for the differential;
 - (g) the value and description of the property, if any, acquired or to be acquired out of the proceeds of the issue or offer; and
 - (h) the details of any share repurchases.
- 35.6. State the number of shares issued, offered or agreed to be issued within the preceding three years to any person other than for cash, the nature of the consideration payable for those shares, and the basis on which the consideration was valued.
- 35.7. Provide a summary of any consolidations or sub-divisions of shares in the issuer during the preceding three years.
- 35.8. State whether the directors or shareholders in general meeting control the issue or disposal of the authorised but un-issued shares.
- 35.9. State what classes of shares are listed and on which exchanges.

36. Directors' interest in shares

- 36.1. Show the direct and indirect interests of the directors in the share capital of the issuer, with a distinction between beneficial and non-beneficial interests.
- 36.2. State whether or not there has been a change in these interests from the end of the previous financial year to the date of application.

37. Options or preferential rights in respect of shares

- 37.1. Fully disclose the substance of any contract or arrangement, or proposed contract or arrangement, 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 issuer or its subsidiary, specifying in respect of each of these:

- (a) the number and description of shares subject to the option or right;
 - (b) the period during which it may be exercised;
 - (c) the exercise date;
 - (d) the exercise or strike price, or price to be paid for shares subscribed for;
 - (e) the nature of the option;
 - (f) the option premium or consideration payable for it;
 - (g) the names and addresses of any beneficiaries (other than current participants under an employee share scheme); and
 - (h) any other material fact or circumstance concerning the granting of the right or option.
- 37.2. Subscribing for shares in sub-paragraph 1, 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.

38. Borrowings

38.1. State:

- (a) the borrowing powers that the directors may exercise on behalf of the issuer and its subsidiaries;
- (b) how these powers may be varied; and
- (c) the circumstances in which these powers have been exceeded during the last three years.

38.2. Provide details of material loans to the issuer and its subsidiary, including issued debentures and preference shares classified as debt in terms of financial reporting standards, stating for each of them:

- (i) whether the loan is secured or unsecured;
- (ii) the name of the lender or debenture-holder;
- (iii) the amount, terms and conditions of repayment or renewal;
- (iv) the nominal and real rates of interest on each loan;
- (v) details of any security provided;
- (vi) details of any conversion or redemption rights; and
- (vii) how payments due within the subsequent 12 months will be financed.

38.3. State whether any debentures have been:

- (a) created in terms of a trust deed and the number and value to be issued or agreed to be issued;
- (b) issued by way of conversion or replacement of debentures previously issued, noting any difference between the security for the new debenture and that for the one substituted.

38.4. Describe how the borrowings under 38.2 and 38.3 have been utilised – whether for the purchase of assets by the issuer or a subsidiary, or for any other purpose.

39. Loans and security

39.1. Provide details of material loans made by the issuer or any of its subsidiaries, stating for each of them:

- (a) the date on which the loan was made;
- (b) to whom it was made;

- (c) why and how the loan was made;
 - (d) the rate of interest and terms of repayment;
 - (e) if the payment of interest or repayment of capital is overdue, the last date on which payment was made and the extent of the arrears;
 - (9) the term of the loan;
 - (g) the type of security held;
 - (h) the current fair value of the security and the method of valuation;
 - (i) if the loan is unsecured, the reasons for making an unsecured loan; and
 - (j) if the loan was made to another company, the names and addresses of the directors of that company.
- 39.2. Any loan to a director or manager of the issuer, other than a loan made in the ordinary course of business by an issuer or subsidiary which is in the business of making loans, is a material loan for purposes of 39.1.
- 39.3. For any security given by the issuer or any of its subsidiaries for the indebtedness of any other person, provide details similar to those required under 39.1.

40. Property acquired or to be acquired

- 40.1. List particulars of any immovable property or other fixed assets including any company, shares or businesses or any option to acquire any of these, purchased or acquired by the issuer or its subsidiary in the past three years, or which is proposed to be purchased or acquired, stating for each transaction –
- (a) the date of the acquisition or proposed acquisition;
 - (b) the purchase amount, specifying the portion settled by the issue of shares, the payment of cash and other means, and how any outstanding amount is to be settled;
 - (c) details of the valuation of the property;
 - (d) any goodwill payment and how the goodwill was or will be accounted for;
 - (e) any loans incurred, or to be incurred, to finance the acquisition;
 - (9) the nature of title or interest acquired or to be acquired.
- 40.2. State whether property described above has been transferred into the name of the issuer or any of its subsidiaries and provide details if the property has been mortgaged, ceded or pledged.
- 40.3. For any acquisition of shares in an unlisted subsidiary or associate of the issuer, if anything less than 100% of the shares was acquired, state the reason for acquiring the lesser amount of shares and disclose whether anyone associated with the controlling shareholders of the issuer, or a related corporation, has an interest in the transaction and the extent of the interest.

41. Sellers

- 41.1. State in respect of the sellers of any material assets purchased or acquired by the issuer or its subsidiaries during the past three years:
- (a) their names and addresses;
 - (b) the amount paid or payable in cash or securities to each of them;

- (c) the amount (if any) payable for goodwill or items of a similar nature;
 - (d) the date on which the asset was acquired by the seller, and if within the last three years, the cost of the asset to the seller;
 - (e) If the seller is a company, the names and addresses of the controlling shareholders of the seller.
- 41.2. If any of the information required under 41.1 is unobtainable, give reasons.
- 41.3. State whether or not the sellers have guaranteed the book debts or other assets and describe any warranties that have been given.
- 41.4. State whether the seller's agreement precludes the seller from carrying on business in competition with the issuer or any of its subsidiaries; or imposes any other restriction on the seller, providing details of any payment relating to a restraint of trade and the nature of the restraint.
- 41.5. State how any liability for accrued taxation, or any apportionment of it to the date of acquisition, is to be settled in terms of the seller's agreement.
- 41.6. If securities are purchased in a company that becomes a subsidiary of the issuer, show the difference between the amounts paid for the securities and the proportionate value of the net assets of the company in which the securities were acquired.
- 41.7. If securities are purchased in a company that will not be accounted for as a subsidiary, state how the value of the securities was determined.

42. Disposal of property

- 42.1. State for any immovable property or other fixed assets including any company, shares or businesses or any option to acquire any of these, disposed of by the issuer or any of its subsidiaries in the past three years, or to be disposed of:
- (a) the date of disposal or proposed disposal;
 - (b) the amount received, the portions settled by the receipt of securities, cash or other means and how any outstanding amount is to be settled;
 - (c) details of the valuation of the property; and
 - (d) the names and addresses of the purchasers.
- 42.2. If the purchaser is a public company, state the names and addresses of the controlling shareholders of the company, and if any other type of company, state the names and addresses of the beneficial owners.

43. Material commitments and contingent liabilities

- 43.1. Provide details of all material commitments, lease payment and contingent liabilities of the group.
- 43.2. State whether there are any unconcluded legal or arbitration proceedings, including proceedings that are pending or threatened, that are material, or have in the last 12 months, been material, and if so provide details of:
- (a) the parties to the dispute;
 - (b) the facts of the dispute;
 - (c) the type of relief sought or amount of the claim;
 - (d) the potential liability to the issuer;

- (e) the potential or anticipated cost of proceedings; and
- (f) if proceedings have commenced, the court or forum.

44. Material contracts

- 44.1.** State the date, the nature of and the parties to, every material contract mentioned in 4.3, and provide details of a reasonable time and place at which copies of these contracts, or of any transcript of translation, may be inspected.

EXPENSES RELATED TO OFFERS OF SECURITIES

45. Amounts paid or payable to promoters

- 45.1.** State the amounts paid and benefits given within the preceding three years or to be paid or given to any promoter or to any corporation of which the promoter is or was a member, the promoter's name and address and the services rendered or consideration given for the payment or benefit.

46. Commissions paid or payable in respect of underwriting

- 46.1.** State the commission paid within the preceding three years, or to become payable to any person (including a promoter, director, officer or holding company of the issuer) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares of the issuer, listing the name, occupation and address of each such person, the amounts underwritten or sub-underwritten by each of them and the rate of the commission payable for the underwriting or sub-underwriting contract with each of them.
- 46.2.** If an underwriter or sub-underwriter is a company, state the names of the directors of the company and the nature and extent of any direct or indirect interest which any promoter, director or officer of the issuer might have in that company.

47. Preliminary expenses and issue expenses

- 47.1.** State the amount or estimated amount of preliminary expenses incurred in the past three years, and other expenses related to the issue, including:
- (a) accounting, legal, and other professional fees;
 - (b) taxes, transfer costs and duties; and
 - (c) printing and distribution expenses.
- 47.2.** State the names of the persons to whom any fees under 47.1(a) were paid or are payable and the amount paid or due to each of them.

DISCLOSURE OF INTEREST, CORPORATE GOVERNANCE AND INTERNAL CONTROLS

48. Interest of directors and promoters

- 48.1. Provide full particulars of the nature and extent of any material interest of the promoter or a director in any transaction effected by the issuer or a related corporation in the past three years.
- 48.2. Provide full particulars of the nature and extent of any material interest of the directors and promoter in the promotion of the issuer and in any property intended to be acquired by the issuer or its subsidiary out of the proceeds of the issue.
- 48.3. State the amount of any payment or benefit given in the last three years or proposed to be paid or given to any promoter, not being a director of the issuer, and the consideration received or receivable.
- 48.4. If a director or promoter's interest as described in 48.1 to 3 is through an intermediary, state the nature and extent of the intermediary's interest and the nature and extent of the director or promoter's interest in that intermediary.
- 48.5. Provide a statement of amounts or inducements paid or agreed to be paid by any person within the past three years for any director to serve as a director, or for services rendered by the director or an intermediary in the promotion or formation of the issuer.

49. Corporate Governance

- 49.1. Provide the information required under sub-paragraphs 2 to 6 for the issuer and separately for any corporation mentioned in paragraph 14.3 or 33.2.
- 49.2. Describe the procedures followed for appointment of directors to the corporation's board.
- 49.3. State whether the issuer or its group has a set policy for achieving a division of responsibility, ensuring a balance of power and authority within the board, and preventing dominance. If so, state –
 - (a) the policy;
 - (b) how it is implemented; and
 - (c) assess the extent to which its objectives have been achieved.
- 49.4. Describe how the duties of the chief executive officer and the chairperson are segregated.
- 49.5. Categorise each of the directors as –
 - (a) being involved in the day to day management and running of the business and in full salaried employment of the issuer or its group ("an executive director"); or
 - (b) not being involved in the day to day management of the business and not in full-time salaried employment of the issuer or its group ("a non-executive director"); or
 - (c) being a non-executive director who –
 - (i) does not represent a shareholder with the ability to control or significantly influence management or the board;
 - (ii) has not in the preceding three financial years been employed as an executive manager or executive director of the issuer or its group;
 - (iii) is not a member of the immediate family of an individual mentioned in (ii);
 - (iv) is not a professional advisor to the issuer or its group, except as a director;

- (v) is not a significant supplier to, or customer of the issuer or its group;
- (vi) has no significant contractual relationship with the company or group; and
- (vii) is free from any business or other relationship that could be seen to materially interfere with the individual's capacity to act in an independent manner (such a person being "an independent director").

49.6. State the composition of audit and remuneration committees, describing their mandates and activities (including the number of meetings held in the last financial year).

50. Internal controls over financial reporting

50.1. Describe the mechanisms employed to safeguard financial reporting within the corporation, including the responsibilities imposed on management, the framework used to evaluate the effectiveness of control mechanisms over financial reporting and an assessment by management of the design and operating effectiveness of the internal controls.

51. Approval of the offer

51.1. Provide a summary of the process that the issuer followed in deciding to issue or allot the securities being offered, noting in particular the factors taken into consideration by the Board and any external advice obtained.

52. [open paragraph]

ADDITIONAL REQUIREMENTS FOR MINERAL, PROPERTY AND INVESTMENT COMPANIES

The prospectus of a mineral company, property company and investment company must include the additional information required by Addendums A, B and C, respectively.

Part 2: Addendum A

Additional requirements for prospectus of a mineral company

53. Definitions

- 53.1. For purposes of this addendum,
- (a) '*mineral company*' means a company whose principal activity is mining or exploration;
 - (b) '*competent person*' means a person with a minimum of five years experience relevant to the activity undertaken, the style of mineralization and the type of deposit under consideration, who is a member of a South African or international body of professionals recognized by the South African Mineral Resources Committee (SAMREC).

- (c) 'exploration' means the intentional searching or prospecting for any mineral, but not in the process of mining;
- (d) 'mining' means the exploitation of any mineral deposit, whether by an excavation of the earth (including under the sea or other water or in any tailings), any bore-hole made for the purpose of winning a mineral, or in any other way.

54. Reporting standard

- 54.1. Information provided under this addendum must comply with the standards, recommendations and guidelines for public reporting determined from time to time by SAMREC.
- 54.2. Selective reporting – where comprehensive reporting of exploration results is not practicable – must be balanced, representing both high and low grades.
- 54.3. All values stated should be with reference to appropriate market-related discount rates.

55. Report by expert

- 55.1. The prospectus of a mineral company must include a report by a competent person.
- 55.2. The report must be dated less than 6 months prior to the date of application
- 55.3. The report must state –
 - (a) information about the competent person:
 - (i) his or her full name, address, professional qualifications and relevant experience;
 - (ii) the name and address of the body recognized by SAMREC of which the competent person is a member; and
 - (iii) if the competent person is not independent of the issuer, the nature of the relationship or interest.
 - (b) Concerning the mineral resources and reserves of the issuer –
 - (i) the geological characteristics of the occurrence;
 - (ii) an estimation of mineral resources, providing all relevant technical details;
 - (iii) an estimate of the tonnages, grades and volumes, as appropriate, and a general description of the methods by which the estimates were made;
 - (iv) the anticipated mining tonnages, grades and volumes; and
 - (v) the planned processing tonnages, grades and volumes, and other principal assumptions relating to any forecast of revenues and operating costs.
 - (c) With regard to environmental management –
 - (i) confirm that an environmental management programme as required by the Mineral and Petroleum Resources Development Act (Act 28 of 2002) has been approved; and
 - (ii) state the cost of the programme, restoration liabilities, anticipated future environmental liabilities and their financial impact and funding.
 - (d) Locations –

- (i) detail each location of exploration or mining; and
- (ii) in respect of each location, provide diagrams, maps and plans showing the nature and extent of workings and principal geological features.
- (e) Mineral and surface rights –
 - (i) state the ownership of the various properties, mineral rights and other rights;
 - (ii) describe the nature of the issuer's rights to explore and / or mine and to use the surface of the properties;
 - (iii) provide the principal terms and conditions of agreements, concessions, consents, permission, permits or authorisations obtained or to be obtained; and
 - (iv) state whether or not there are any legal proceedings that may affect any of these rights.
- (9) Assaying –
 - (i) state the laboratory used for assaying and whether it is accredited by the South African Analytical Society (SANAS); and
 - (ii) explain the nature, quality and appropriateness of the assaying and laboratory procedures, including quality control procedures, and whether the technique is considered partial or total.
- (g) History –
 - (i) provide a history of past operations and exploration works undertaken; by the issuer and its associates – stating successes and failures; and
 - (ii) provide statistics indicative of past performance and trends.
- (h) The competent person must interpret the information available and provide an overall assessment of the viability of the project.
- (i) The competent person must provide an explanation of all technical terms used in the report.

56. Requirements specific to exploration company

56.1. The report of an exploration company must state:

- (a) exploration results, specifying in each case,
 - (i) the name of the organisations that carried out the exploration, investigation and interpretation;
 - (ii) drill types and techniques;
 - (iii) level of detail to which samples have been logged and whether logging was qualitative or quantitative;
 - (iv) the nature and type of sampling, and safeguards employed to ensure that samples are representative;
 - (v) how samples recovered from drilling have been recorded and how results were assessed;
 - (vi) how results were verified and audited and whether by independent or alternative assessors;
 - (vii) the quality and accuracy of surveys used to locate drill holes and of topographical control;

- (viii) data density and distribution, including whether it is sufficient to establish geological and grade continuity appropriate to mineral resource or mineral reserve estimation;
 - (ix) the nature, detail and reliability of geological information, including geophysical and geochemical data;
 - (x) data compositing (aggregation) methods including averaging techniques and all assumptions; and
 - (xi) any other relevant factors, including groundwater, geotechnical and rock characteristics and potential deleterious or contaminating substances.
- (b) the nature and scope of any further work to be undertaken;
- (c) cost and funding estimates, with details of:
- (i) the funding requirements for exploration for at least two years subsequent to the date of the report;
 - (ii) expenditure incurred in or budgeted for exploration to date; and
 - (iii) the adequacy, according to projections, of capital raised for exploration.

57. Requirements specific to mining company

57.1. **The** report of a mining company must state,

- (a) mineral resource estimates for conversion to mineral reserves, disclosing:
 - (i) the mineral resources estimate used as a basis for conversion to a mineral reserve;
 - (ii) whether mineral resources are reported additional to or inclusive of mineral reserves;
 - (iii) whether an estimate for an inferred mineral resource is included in the mining valuation model, and its effect (using as a basis for comparison a valuation excluding the estimate).
- (b) cut-off grades and parameters, providing the basis of cut-off grades or quality parameters applied, being economic value per block or per grade, including if appropriate the basis of equivalent metal formulae;
- (c) mining factors or assumptions, disclosing the method and all assumptions used to convert mineral resources to mineral reserves (i.e. either by application of appropriate factors by optimisation or by preliminary or detailed design);
- (d) volume and capacity estimates for processing, stating the production volumes and capacities;
- (e) where production is sourced from multiple sections, show:
 - (i) the effect of different mining parameters on grades and costs;
 - (ii) waste mining and other dilution issues, where relevant;
- (f) mass balance plan and description, showing mass balance in schematic form, linking mining and production information to the metallurgical plant feed and then to final saleable products and wastes;

- (g) metallurgical factors and assumptions, stating:
 - (i) the proposed metallurgical process and its appropriateness to the style of mineralization;
 - (ii) whether the process uses established or pioneer technology;
 - (iii) the nature, amount and degree to which metallurgical test work is representative and the metallurgical recovery rates used;
 - (iv) assumptions and allowances;
- (h) cost, revenue and funding, stating:
 - (i) how capital and operating cost projections were derived;
 - (ii) assumptions relevant to revenue including head grade, metal and commodity prices, exchange rates, transportation and treatment charges and penalties;
 - (iii) allowances made for royalties;
 - (iv) basic cash flow inputs and funding requirements, including any parameters that would influence cash flow.
- (i) a market assessment for each of the products, providing:
 - (i) an analysis of demand, supply and stock levels;
 - (ii) an assessment of consumption trends;
 - (iii) a customer and competitor analysis;
 - (iv) an assessment of the market window.
- (j) permits and approvals, stating whether all required discharge permits and other government and statutory approvals have been obtained;
- (k) operations, stating the date on which mining commenced or is due to commence;
- (l) with respect to plant and equipment,
 - (i) assess the value, form of ownership, type, extent and condition of key items of plant and equipment;
 - (ii) state any material plant and equipment that will need to be acquired to achieve the forecast rates of mining.

57.2. The report must provide an annualised forecast of free cash flow mining valuation figures and all key criteria and assumptions made at arriving at the valuation, including the portion in years of the life of the mine for which there are reasonable prospects that the mineral reserves and mineral resources can sustain the relevant life-of-mine cash **flows**, and for each of these years state:

- (a) expected run-of-mine tonnage and grade to be mined;
- (b) a reconciliation of the grade and tonnage of the mineral reserves (fully diluted to plant) back to *in situ* mineral reserves;
- (c) recovery factors showing final grade recoveries reconciled back to mineral reserves delivered to plant;
- (d) revenue receivable per final defined product unit sold and in total for the year;
- (e) mining, beneficiating, smelting, refining, marketing, environmental and any other cost categories per defined unit (e.g. run of mine tonne, reef tonne, recovered unit) and in total for the year;

- (f) capital expenditure, differentiating between initial, new and ongoing capital expenditure;
- (g) expected salvage value of assets less liabilities, including environmental liabilities at the end of the cash flow valuation;
- (h) taxation, royalties and other similar charges;
- (i) unredeemed capital expenditure balances, capital gains tax profits and losses, balances carried forward and assessed losses;
- (j) expected interest and finance costs;
- (k) changes in working capital and consequent cash flow implications;
- (l) an estimate of all funding requirements and funding movements, differentiating between debt, equity and internal resources;
- (m) repayment of long-term loans and debts;
- (n) final net free cash for the year;
- (o) range of real or nominal discount rates used to discount the free cash flow per annum and consequent net present values;
- (p) the net present value per share or unit used for final valuation purposes;
- (q) economic assumptions such as exchange rates, interest rates, inflation rates, escalation and de-escalation rates and any other factors; and
- (r) the specific terms and effect of any forward sale or hedging contracts entered into.

58. Assessment of reasonableness

The competent person responsible for the report must comment on the reasonableness of any mining, technical and economic forecasts by the directors in the prospectus, and this comment must be included in the prospectus.

59. Additional information

Any material data that becomes known after the report is finalised, but prior to the application date, must also be submitted, stating the estimated impact on the conclusions of the report.

Part 2: Addendum B

Additional information to be included in prospectus of a property company

60. Definitions

60.1. For purposes of this addendum,

- (a) '*property company*' is a company of which the principal business is (i) the holding of properties for letting or investment, or (ii) the purchase and development of properties; and
- (b) '*external evaluator*' is an independent property evaluator who is in practice and is a member of the Institute of Valuers.

61. Details of property portfolio

61.1. Summarise for every freehold or leasehold property held by the company ('*property*'),

- (a) location;
 - (b) tenancies;
 - (c) material leases;
 - (d) rent;
 - (e) lease expiry dates;
 - (9) review dates;
 - (g) options to review;
 - (h) escalation clauses;
 - (i) average yields; and
 - (j) current replacement costs.
- \$1.2.** For every property managed by an agent, state:
- (a) the name and business address of the agent;
 - (b) the form of incorporation of the agent;
 - (c) qualifications and experience of the agent: and
 - (d) terms of contract and remuneration.
- 61.3. For each property which is material in relation to income or balance sheet, provide:
- (a) a separate three year profit history;
 - (b) separate balance sheets for the past two years;
 - (c) a valuation report in accordance with paragraph *46.

62. Interests of officers and related persons

- 62.1.** State in respect of any property held or controlled by the issuer or its subsidiary or holding company, or to be acquired out of the proceed of the issue, whether any promoter, director or manager of the issuer or its subsidiary or holding company, or a trustee:
- (a) has a beneficial interest in that property, whether directly or indirectly;
 - (b) is or has contracted to become a tenant of any property.

63. Valuation

- 63.1. Any valuation of property for purposes of a prospectus must **be** done by an external evaluator and reconciled with the figures contained in the company's most recent audited annual financial statement.

64. Valuation report

- 64.1.** The prospectus of a property company must include a valuation report by an external evaluator, whose name, address and professional qualifications must be stated.
- 64.2.** The report must state in respect of each property:
- (a) the address;
 - (b) a brief description of the property (e.g. area and extent of improvements);
 - (c) the valuation;
 - (d) the date and nature of the evaluator's inspection;
 - (e) the effective date on which the property was valued;
 - (9) existing use;
 - (g) relevant zoning and planning permissions;
 - (h) any material contravention of regulations;
 - (i) tenure, giving the term if leasehold;

- (j) main terms of tenants' leases and sub-leases;
 - (k) terms of lease where the tenant is a subsidiary or holding company of the issuer;
 - (l) current net annual rent (and the estimated future net annual rent at a specified date where this amount differs materially from the current rent);
 - (m) approximate age of improvements;
 - (n) present capital value in existing condition;
 - (o) any other matters that could materially **affect** the value (including assumptions, contingent liabilities, etc.); and
 - (p) the source of information and measures employed for verification.
- 64.3. The method of valuation must be disclosed, stating whether it ~~is~~ based on open market value, depreciated replacement cost, or any other.
- 64.4. Any assumption underlying an evaluation must be disclosed, including any qualification to the definition of open market value, if applicable.
- 64.5. The report must show separately any evaluation of the benefit or detriment of contractual arrangements in respect of property and of options held, and reconcile costs and values.
- 64.6. The report must contain a synopsis showing the number of properties and the aggregate of their valuations must be split into freehold and leasehold properties.
- 64.7. Negative values must be shown separately and not aggregated with the other valuations.
- 64.8. Properties valued on an open market basis, a depreciated replacement cost basis, and other basis, and external companies, must be aggregated separately.
- 64.9. The report must be dated.

65. Valuation of property in the course of development

- 65.1. If an evaluation is made during the course of development or in respect of land to be developed, the following additional information must be provided:
- (a) whether planning consent has been obtained, the date of consent and any material or onerous conditions imposed;
 - (b) the expected date of completion of the development and an estimate of letting or occupation dates;
 - (c) the estimated total cost of carrying *out* or completing the development, including the cost of finance and letting commissions.
 - (d) the open market value of the land and buildings in their existing state at the date of valuation; and
 - (e) the estimated values at current prices and on the basis of current market conditions:
 - (i) after development has been completed;
 - (ii) after completion and letting of property.

66. Valuation of property occupied for purposes of business

66.1, A property occupied for purposes of business must be valued in accordance with financial reporting standards issued in terms of section 440U(2) of the Act.

67. External property

67.1. Property outside of the Republic must be stated separately and the basis of its valuation clearly identified.

Part 2: Addendum C

Additional information to be included in prospectus of an investment company

68. Definition

For purposes of this addendum, '*investment company*' is a company whose principal business is to invest and trade in securities.

69. Supplementary information

69.1. An investment company must:

- (a) describe its investment policy;
- (b) state whether it has invested or intends to invest in less than 10 different securities;
- (c) provide an analysis of:
 - (i) the current and intended investment portfolio by sector and by categorisation into listed and unlisted securities;
 - (ii) funds not invested;
 - (iii) income, distinguishing between dividends, interest and other forms of income;
- (d) list the 10 largest investments and any other investments that comprise 5 per cent or more of the value of the asset portfolio, providing for each of the securities:
 - (i) a brief description of the underlying business;
 - (ii) the exchange if any on which the securities are listed;
 - (iii) the percentage of share capital comprised by the investment;
 - (iv) the cost of the investment;
 - (v) the market value, or if not listed, the amount at which the directors value the investment and the date at which it was valued;
 - (vi) the income derived from the investment in the past two years, stating any abnormal income;
 - (vii) any extraordinary items;
 - (viii) the proportionate underlying net assets attributable to the investment;
- (e) disclose any provision for diminution in value of investments, the investments against which provision has been made and stating for each of these:
 - (i) its cost;
 - (ii) its book value;
 - (iii) the provision made; and
 - (iv) the reason for the provision.

- (9) provide an analysis of unrealised profits, distinguishing between listed and unlisted companies;
- (g) state the name of the manager of the investments, the terms and duration of its appointment, the basis for its remuneration and details of experience and qualifications;
- (h) state the net asset value per share and tangible net asset value per share.

Part 3

Reports to be included in a prospectus

70. Report on issuer's financial history

70.1. The report should specify for the last 5 years:

- (a) profits or losses and assets and liabilities in accordance with 70.2 or 70.3;
- (b) the rates of any dividends paid by the issuer in respect of each class of shares, giving particulars of each class of shares on which dividends were paid and particulars of the cases in which no dividends were paid on any class of shares;
- (c) whether annual financial statements were issued for the entire period, and, if not, the period for which statements were not produced;
- (d) any qualifications or modifications by auditors to financial statements.

70.2. If the issuer has no subsidiary, the report must set out:

- (a) the profits or losses of the issuer for each of the last five years; and
- (b) the assets and liabilities of the issuer as at the last date on which the annual financial statements of the issuer were produced.

70.3. If the issuer has a subsidiary, the report must set out for each of the last five years:

- (a) the issuer's profits and losses;
- (b) to the extent that they affect the issuer, the profits and losses of each subsidiary;
- (c) to the extent that it affects the issuer, the combined profit or loss of the group;
- (d) the issuer's and each of the subsidiaries' assets and liabilities at the date of their latest annual financial statements, also showing the interest of other members of the subsidiaries; and
- (e) the consolidated assets and liabilities of the group, also showing the interests of other members of the subsidiaries.

70.4. If a subsidiary incurred losses in the last 5 years, the report should state the amounts of such losses and the manner in which provision was made.

70.5. The issuer's auditor must certify in the report that he or she:

- (a) has reviewed its content, the financial statements from which the information is derived and material accounting policies, estimates and assumptions;
- (b) is satisfied, where applicable, that:

- (i) debtors and creditors do not include any accounts other than trade accounts;
 - (ii) adequate provision is made for doubtful debts;
 - (iii) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices; and
 - (iv) inter-company profits in the group have been eliminated;
- (c) is satisfied on grounds of the review undertaken that the report is accurate.
- (d) If the auditor is not satisfied in any respect, the auditor must qualify his or her report accordingly.
- (e) The auditor must indicate any adjustment of figures by way of an annotation.

71. Report if corporation is to become a subsidiary or material investment

71.1. If the proceeds or any part of the proceeds of the issue of the shares are to be used to acquire a corporation or applied in any other way to cause that corporation to become a subsidiary or material investment of the issuer, the prospectus must include a report on:

- (a) the profits or losses of that corporation in respect of each of the last five years; and
- (b) the assets and liabilities of that corporation at the date of its latest financial statements.

71.2. The report must state -

- (a) whether annual financial statements were issued for the entire five year period, and, if not, the years for which statements were not produced; and
- (b) any qualifications or modifications by auditors to financial statements during this period.

71.3. The report must:

- (a) indicate how the profits or losses of the corporation would, in respect of the shares to be acquired, have affected members of the issuer and what allowance would have been made in respect of assets and liabilities so dealt with, for holders of other shares, if the issuer had at all material times held the shares to be acquired; and
- (b) deal with any subsidiary of the corporation in the manner set out under 70.3 and 4.

71.4. The issuer's auditor must certify in the report that he or she:

- (a) has reviewed its content, the financial statements from which the information is derived and material accounting policies, estimates and assumptions;
- (b) is satisfied, where applicable, that:
 - (i) debtors and creditors do not include any accounts other than trade accounts;
 - (ii) adequate provision is made for doubtful debts;

- (iii) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices; and
- (iv) inter-company profits in the group have been eliminated;
- (c) ~~is~~ satisfied on grounds of the review undertaken that the report is accurate.

71.5. If the auditor is not satisfied in any respect, the auditor must qualify his or her report accordingly.

71.6. The auditor must indicate any adjustment of figures by way of an annotation.

72. Report if a business undertaking is to be acquired

72.1. If the proceeds, or any part of the proceeds, of the issue of the shares are to be applied directly or indirectly to the purchase of any business undertaking, the prospectus must include a report on:

- (a) the profits or losses of the business undertaking in each of the five financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the date of its latest financial statements.

72.2. The issuer's auditor must certify in the report that he or she:

- (a) has reviewed its content, the financial statements from which the information is derived and material accounting policies, estimates and assumptions;
- (b) is satisfied, where applicable that:
 - (i) debtors and creditors do not include any accounts other than trade accounts;
 - (ii) adequate provision is made for doubtful debts;
 - (iii) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices; and
 - (iv) inter-company profits in the group have been eliminated;
- (c) is satisfied ~~or~~ grounds of the review undertaken that the report is accurate.

72.3. If the auditor ~~is~~ not satisfied in any respect, the auditor must qualify his or her report accordingly.

72.4. The auditor must indicate any adjustment of figures **by** way of an annotation.

73. Report on material developments

73.1, The directors of the issuer must report for (i) the issuer, (ii) any corporation or business dealt with under 71 or 72, and (iii) where required, any of their respective subsidiaries, on any material change since their latest annual financial statements, to the date of application:

- (a) in the nature of their business activities;
 - (b) in their trading position;
 - (c) in their income and expenditure;
 - (d) in their assets or liabilities; and
 - (e) in their equity.
-