

COMPANIES REGULATIONS
DRAFT FOR PUBLIC COMMENT 21 DECEMBER 2009

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

Regulation 30

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

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

31. General exemption from audit and review

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

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

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

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

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

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

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Regulation 33-r35

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

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

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

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

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

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

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

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

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Regulation 36

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

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

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

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

37. Acquisition and loss of shareholder rights*Authority: s 223(1)(d)(ii)*

A person -

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

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Regulation 38-r39

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

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

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

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

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

40. Legality of functions***Authority: s. 49 (7)***

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

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

Regulation 41-r43

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

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

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

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

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

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

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

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Regulation 44-r45

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

44. Record dates*Authority: S. 59 (2)(b)*

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

45. Prescribed officers of companies*Authority: s 66 (10)*

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

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

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Regulation 46-r47

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

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

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

Part G – Winding up and Deregistering companies**47. Winding-up, dissolution and de-registration of companies***Authority: s. 80 to 82*

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

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

48. Transitional effect of previous regulations concerning insolvent companies

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

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Chapter 3 - Enhanced Accountability and Transparency :

Regulation 49-r50

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

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

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

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

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

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

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

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

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

Regulation 51-r53

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

51. Forms required by this Chapter

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

Chapter 4 - Offerings of Company Securities**Part A – Offering Securities****52. Threshold values and time periods***Authority: s. 96 (2)*

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

53. Forms relating to securities offerings

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

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

Regulation 54-r55

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

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

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

55. Application

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

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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.

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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.

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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;

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- (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.

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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.

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

Regulation 64

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- (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.

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Regulation 65-r66

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- (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-

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Regulation 67

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- (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;

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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

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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.

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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

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Regulation 78

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- (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

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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

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Regulation 82

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- (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-