
GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

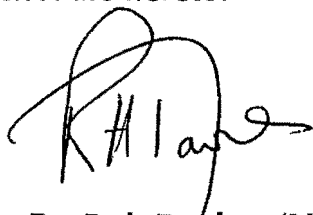
No. R. 351

26 April 2011

COMPANIES ACT, 2008

COMPANIES REGULATIONS, 2011

I, Dr Rob Davies, the Minister of Trade and Industry, hereby in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008) and in consultation with the Companies and Intellectual Property Commission and the Chairperson of the Takeover Regulation Panel, make Companies Regulations as set out in the schedule hereto.



Dr. Rob Davies, (MP)

Minister of Trade and Industry

COMPANIES REGULATIONS, 2011

In terms of section 223, and Item 14 of Schedule 5, of the Companies Act, 2008 (Act No. 71 of 2008), the Minister of Trade and Industry publishes the following regulations relating to the functions of the Companies Commission, the Takeover Regulation Panel and the Companies Tribunal, and other matters relating to the regulation of companies, to take effect at the time that the Companies Act, 2008 takes effect.

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COMPANIES REGULATIONS, 2011

Chapter 1 - General Provisions

Part A— Interpretation

1. Short title

These regulations may be cited as the *Companies Regulations, 2011*.

2. Definitions

See also s. 1, and Regulation 2: Definitions in section 1 of the Act apply equally to the regulations

In these regulations, unless the context indicates otherwise—

- (a) “certified copy” means a copy of a document certified as such by a person having authority to do so, or electronically certified in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) by a person having authority to do so;
- (b) “principal office” means the principal location within the Republic, as determined in terms of regulation 165 (1), at which a regulatory agency conducts its operations and is accessible to the public;
- (c) “publish a notice” means to publicise information to the general public, or to a particular class of persons as applicable in specific circumstances, by any means that can reasonably be expected to bring the information to the attention of the persons for whom it is intended;
- (d) “recording officer”, when used in relation to a particular matter, means—
 - (i) the officer of the Commission, Panel, or Tribunal, as the case may be, appointed or designated in terms of regulation 167; or
 - (ii) any assistant or acting recording officer having responsibility for the particular matter;
- (e) “regulation” includes any Table or Form included within, or referred to in, these regulations;
- (f) “regulatory agency” means the Commission, the Panel, or the Companies Tribunal;
- (g) “senior officer” means, in the case of—
 - (i) the Commission, the Commissioner;

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- (ii) the Panel, the chairperson of the Panel, designated in terms of section 198; or
 - (iii) the Companies Tribunal, the chairperson of the Tribunal, appointed in terms of section 194;
 - (h) “the Act” means the Companies Act, 2008 (Act No. 71 of 2008), as amended from time to time; and
 - (i) “Tribunal” means the Companies Tribunal.

3. Interpretation

- (1) In these regulations—
 - (a) a reference to a section by number refers to the corresponding section of the Act;
 - (b) a reference to a regulation by number refers to the corresponding provision of these regulations; and
 - (c) a reference to a sub-regulation or other partial regulation by number refers to the corresponding clause of the regulation in which the reference appears.
- (2) A word or expression that is defined in section 1, or elsewhere in the Act to the extent applicable in particular circumstances, bears the same meaning in these regulations as in the Act.

Chapter 1 - General Provisions : Part B— Guidelines, Practice Notes, Forms, Notices and other documents

Regulation 4-r5

Part B— Guidelines, Practice Notes, Forms, Notices and other documents

4. Issuing of Guidelines and Practice Notes

See s. 188 (2)(b) and s. 201 (2)(b)

(1) In this regulation—

- (a) “Guideline” means a document issued by a regulatory agency with respect to a matter within its authority, which sets out recommended procedures, standards or forms reflecting that regulatory agency’s advice as to what constitutes best practice on a matter; and
- (b) “Practice Note” means a document issued by a regulatory agency with respect to a matter within its authority, which sets out—
 - (i) a procedure that will be followed by that regulatory agency; or
 - (ii) a procedure to be followed when dealing with that regulatory agency; or
 - (iii) that regulatory agency’s interpretation of, or intended manner of applying, a provision of the Act or these regulations.

(2) The senior officer of a regulatory agency may—

- (a) issue a Guideline at any time by publishing a notice of the Guideline to the general public in the *Gazette*, any generally circulated newspaper, on the regulatory agency’s website, or by any similar means of providing information to the public generally; or
- (b) issue a Practice Note at any time by publishing it in the *Gazette*, and may amend or withdraw any such Practice Note at any time by subsequent notice in the *Gazette*.

(3) A Guideline or Practice Note must be consistent with the Act and these regulations, and a provision of the Act or these regulations prevails if there is any inconsistency between that provision and any such Guideline or Practice Note.

(4) A regulatory agency must—

- (a) maintain a notice on its website of the existence of every Guideline or Practice Note that it has published and not withdrawn;
- (b) provide for copies of every Guideline or Practice Note to be freely accessed or printed from its website; and
- (c) provide a printed copy of any Guideline or Practice Note freely to any person upon request.

5. Forms and filing requirements

See s. 223 (1)(b) and (d)(i)

(1) Whenever a document is required—

- (a) in terms of a section of the Act that is listed in column 1 of Table CR 1, or a provision of these regulations that is listed in column 1 of Table CR 1; and
- (b) for a purpose listed in column 2 of that Table,

the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that Table, and must be produced, delivered, or filed as the case may be subject to any conditions or requirements listed opposite that section number in column 4 of that Table.

- (2) If a regulatory agency has reasonable grounds for uncertainty whether a copy of a document to be filed is in fact unaltered, as contemplated in section 6 (7), the regulatory agency may require the person seeking to file that document to provide a certified copy of the document.
- (3) The Commission may from time to time by written notice request a company to file a copy of any document that had previously been filed under the Act or these regulations: Provided that no prescribed fee that would normally be required when filing any such document will be payable when filing the copy in compliance with the request.

6. Notice of availability of documents

See s. 6 (11)(b)(ii)

- (1) A notice announcing the availability of a document, record or statement, as contemplated in section 6 (11)(b)(ii), must—
 - (a) be in writing and delivered to each intended recipient of the document, record or statement either—
 - (i) in paper form at the intended recipient's last known delivery address; or
 - (ii) in electronic form at their last known electronic mail address; and
 - (b) set out clearly—
 - (i) the title of the document, record or statement, the availability of which is being announced;
 - (ii) the extent of the period during which the document, record or statement will remain available; and
 - (iii) the means by which the document, record or statement may be acquired by a recipient of the notice; and
 - (c) include a statement that succinctly summarizes the purpose of the document, record or statement.

Chapter 1 - General Provisions : Part B— Guidelines, Practice Notes, Forms, Notices and other documents

Regulation 7

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- (2) A document, record or statement, the availability of which is being announced as contemplated in section 6 (11)(b)(ii), must be made available to intended recipients either—
- (a) in paper copy, or in a printed version of an electronic original produced by or on behalf of the company on demand by an intended recipient; or
 - (b) electronically in a manner and form such that it can conveniently be accessed and printed by the recipient within a reasonable time and at a reasonable cost.

7. Delivery of documents

See s. 6 (10) and (11)

- (1) A notice or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner—
- (a) contemplated in section 6 (10) or (11); or
 - (b) set out in Table CR 3.
- (2) A document delivered by a method listed in the second column of Table CR 3 must be regarded as having been delivered to the intended recipient—
- (a) on the date and at the time shown opposite that method, in the third column of that table; or
 - (b) if the date and time for the delivery of a document referred to in Table CR 3 to a regulatory agency is outside of the office hours of that regulatory agency, as set out in regulation 165 (2), that document will be deemed to have been delivered on the next business day, subject to regulation 165 (3).
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or these regulations—
- (a) if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High Court for an order of substituted service; or
 - (b) if the Tribunal is required to deliver the document, the recording officer of the Tribunal concerned may apply to the High Court for an order of substituted service.
- (4) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out—
- (a) the name, address, and telephone number of the sender;
 - (b) either—
 - (i) the name of the person to whom it is addressed, and the name of that person's attorney, if applicable; or,

- (ii) the name or description of the class of intended recipients, if the document is being delivered generally to all the members of a particular class of persons;
- (c) the date of the transmission; and
- (d) in the case of a fax transmission—
 - (i) the total number of pages sent, including the cover page; and
 - (ii) the name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

Chapter 2 - Formation, Administration and Dissolution of Companies**Part A— Reservation and Registration of Company Names****8. Company names***See s. 11***(1) In this regulation—**

- (a) “company concerned”, when used in relation to—
 - (i) an application to reserve a name—
 - (aa) for an entity that is contemplated, but not yet incorporated, means that contemplated entity; or
 - (bb) filed by or in respect of an existing company contemplating changing its name, means that company;
 - (ii) a notice of incorporation, means the company being incorporated; or
 - (iii) a notice of Amendment of a Memorandum of Incorporation, means the company whose Memorandum of Incorporation has been amended; and
- (b) “proposed company name” means a name that appears on—
 - (i) an application for name reservation or defensive registration; or
 - (ii) either—
 - (aa) a Notice of Incorporation; or
 - (bb) a Notice of Amendment of a company’s Memorandum of Incorporation

irrespective of whether the name has been reserved or defensively registered before the filing of any such notice.

(2) Irrespective of the language of any words used in a proposed company name—

- (a) every word comprising part of the name must be expressed using the alphabet that is commonly used for writing in any one of the official languages of the Republic; and
- (b) every number—
 - (i) signifying a date must be expressed either in words or in Arabic numerals; or
 - (ii) otherwise forming part of the company’s name must be expressed either in words or in Arabic or Roman numerals.

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- (3) If a proposed company name contains any word or words in any language that is not an official language of the Republic the application or notice filed to reserve, register or use that name must include either—
- (a) a certified translation of that word, or those words, into an official language of the Republic; or
 - (b) a declaration that the word falls, or the words fall, within the category of words contemplated in sub-regulation (4), and that the person concerned is entitled to use that mark.
- (4) If a proposed company name contains—
- (a) a registered trade mark; or
 - (b) a mark in respect of which an application has been filed in the Republic for registration as a trade mark; or
 - (c) a well known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993)
- the application or notice filed to reserve, register or use that name must include satisfactory evidence that the applicant or the company concerned is entitled to use that mark.
- (5) If a proposed company name is the same as a name registered as a business name in terms of the Consumer Protection Act, 2008 (Act No. 68 of 2008), as contemplated in section 11 (2)(a)(ii), the application or notice filed to reserve or use that name must include satisfactory evidence that—
- (a) the name is so registered for the use of the company concerned or of a person controlling the company; or
 - (b) the registered user of that name has executed the necessary documents to transfer the registration of that name to the company concerned.
- (6) If a proposed company name—
- (a) is similar to the name of another company, close corporation or co-operative, and is claimed to be justifiable on the grounds that—
 - (i) the company concerned; and
 - (ii) the other company, close corporation or co-operative, as the case may be,are both part of the same group of companies; or
 - (b) falls within any category of names restricted in terms of section 11 (2) (c), and is claimed to be justifiable on the grounds that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by,

endorsed by, owned by, conducted by, or enjoys the patronage of, as the case may be, a person or entity contemplated in that section,

the application or notice to use that name must include satisfactory evidence supporting that claim.

- (7) In addition to the symbols set out in section 11(1)(a)(ii), the name of a company may include the following symbol: ‘-’.

9. Reservation of company names

See s. 12

- (1) An application to reserve a name in terms of section 12 (1) must be made in Form CoR 9.1, may include as many as four alternative names listed in order of preference, and must be accompanied by—
- (a) the fee set out in Table CR 1; and
 - (b) any relevant documentation or evidence required in terms of regulation 8 with respect to each name included in the application.
- (2) An application to extend the reservation of a name, as contemplated in section 12 (4), must be made in Form CoR 9.2, and must be accompanied by—
- (a) the fee set out in Table CR 1; and
 - (b) in the case of a name in respect of which satisfactory evidence of any facts was required in terms of regulation 8 when the name was first reserved, further satisfactory evidence of the relevant circumstances, including any alteration in those circumstances since the reservation was first applied for.
- (3) As soon as practicable after receiving an application to reserve a name, or to extend the reservation of a name, the Commission must consider the name, or if more than one name is included in the application for reservation, must consider the names serially in the order in which they appear in the application, and must issue to the applicant—
- (a) a Notice Requiring Further Particulars in Form CoR 9.3, if the Commission requires more information to satisfy any relevant requirements in terms of section 11 or 12 or regulation 8, before determining whether to accept the application; or
 - (b) a Notice Confirming a Name Reservation or Registration in Form CoR 9.4, if the Commission has accepted an application to reserve a name, or extend the reservation of a name; or
 - (c) a Notice Refusing a Name Reservation or Registration in Form CoR 9.5, if—
 - (i) the form of the name, or in the case of an application including alternative names, the form of each such name, fails to satisfy any requirements set out in section 11 or 12, or regulation 8; or

- (ii) the use of that name, or in the case of an application including alternative names, the use of each of those names, by the applicant is prohibited in terms of the Act.
- (4) If the Commission has accepted the reservation of a name that the Commission considers may be contestable on any ground contemplated in section 12 (3), the Commission, when issuing Form 9.4 in response to that application, must also issue—
- (a) A Notice of a Potentially Contested Name, in Form CoR 9.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(b) or (c); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 9.7, to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(d).

10. Registration of defensive names

See s. 12 (9)

- (1) An application for registration of a defensive name in terms of Section 12 (9) must be—
- (a) made in Form CoR 10.1; and
 - (b) accompanied by—
 - (i) the fee set out in Table CR 1; and
 - (ii) evidence that the applicant has a direct and material interest in the name.
- (2) An application to renew the registration of a defensive name must be—
- (a) made in Form CoR 10.2; and
 - (b) accompanied by—
 - (i) the fee set out in Table CR 1; and
 - (ii) evidence that the applicant continues to have a direct and material interest in the name.
- (3) As soon as practicable after receiving an application to register a defensive name, or to renew the registration of a defensive name, the Commission must issue to the applicant—
- (a) a Notice Requiring Further Particulars in Form CoR 9.3, if the Commission requires more information to satisfy any relevant requirements in terms of sub-regulation (1)(b)(ii) or (2)(b)(ii) before determining whether to accept the application; or

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

Regulation 11

- (b) a Notice Confirming the Registration in Form CoR 9.4, if the Commission has accepted an application for registration of a defensive name, or to renew the registration of a defensive name; or
- (c) a Notice Refusing a Name Reservation or Registration in Form CoR 9.5, if—
 - (i) the form of the name does not satisfy the requirements of section 11, or regulation 8; or
 - (ii) the use of that name by the applicant is prohibited in terms of the Act.
- (4) If the Commission has accepted the registration of a defensive name that may be contestable on any grounds contemplated in section 12 (3), the Commission, when issuing Form 9.4 in response to that application, must also issue—
 - (a) a Notice of a Potentially Contested Name, in Form CoR 9.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(b) or (c); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 9.7 to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(d).

11. Transfer of reserved names

See s. 12 (5) and (10)

- (1) An application to transfer the reservation of a name, or the registration of a defensive name, to another person—
 - (a) must be made in Form CoR 11.1, and accompanied by the fee set out in Table CR 1; and
 - (b) in the case of a—
 - (i) name reservation in respect of which satisfactory evidence of any facts was required in terms of regulation 8, must be accompanied by satisfactory evidence of the comparable facts in relation to the transferee; or
 - (ii) registration of a defensive name, must be accompanied by satisfactory evidence that the transferee has a direct and material interest in the name.
- (2) As soon as practicable after receiving an application to transfer a name reservation or the registration of a defensive name, the Commission must issue to the applicant—
 - (a) a Notice Requiring Further Particulars in Form CoR 9.3, if the Commission requires more information to satisfy any relevant requirements in terms of regulation 8 or sub-regulation (1)(b); or

- (b) a Notice Confirming a Name Reservation or Registration in Form CoR 9.4, if the Commission has accepted the Notice of Transfer of the name; or
- (c) a Notice Refusing a Name Transfer in Form CoR 11.2 if the use of that name by the transferee is prohibited on the grounds that the evidence of matters contemplated in regulation 8 or sub-regulation (1)(b) is unsatisfactory.

12. Abuse of name reservation system

See s. 12 (6)

- (1) A notice contemplated in section 12 (6) must be issued by the Commission in Form CoR 12.1, and must—
 - (a) specify clearly the purpose of the notice in terms of the items listed in section 12 (6)(a) to (d); and
 - (b) set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.
- (2) If a person who has received a notice in Form CoR 12.1 to show cause why a name should be reserved, continue to be reserved or why a reservation should be transferred, as contemplated in section 12 (6)(a)—
 - (a) fails to respond to that notice within 40 business days after receiving it, the Commission must issue either—
 - (i) a notice in Form CoR 9.5, rejecting the application to reserve the name, or
 - (ii) a further notice in Form CoR 12.1, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.
 - (b) provides information to the Commission within 40 business days after receiving Form CoR 12.1, the Commission, after considering that information, must issue either—
 - (i) a notice in Form CoR 9.4 accepting the reservation, extension or transfer as the case may be; or
 - (ii) a further notice in Form CoR 12.1, cancelling the reservation, or refusing to extend or transfer the reservation, as the case may be.

13. Disputes concerning company names

See s. 160 and Regulation 147

A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received —

- (a) a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or has an interest in the name of a company as contemplated in section 160 (1);

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- (b) a Notice Refusing to Reserve or Register a Name, in Form CoR 9.5;
- (c) a Notice Refusing a Name Transfer, in Form CoR 11.2 in terms of regulation 10, 11 or 12; or
- (d) any notice in Form CoR 12.1, delivered in terms of regulation 12.

Part B— Incorporation and Legal Status of Companies**14. Notice of Incorporation**

See s. 13 (2) to (4)

- (1) A Notice of Incorporation required in terms of section 13 must be filed in Form CoR 14.1 and—
 - (a) must be accompanied by the fee set out in Table CR 2B, subject to sub-regulation (2) and (4);
 - (b) must stipulate whether the company's name will be—
 - (i) in the case of a profit company, its registration number, as contemplated in section 11 (1)(b), in which case the applicable spaces for the name to be entered on Form CoR 14.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission upon assignment of the registration number;
 - (ii) a name that has been reserved or defensively registered for use in terms of the Act, and which the incorporators are entitled to use, in which case the reservation number and that name reserved, or defensively registered, must be set out on Form CoR 14.1; or
 - (iii) a name that has not been reserved in advance, in which case—
 - (aa) the applicable spaces for the name to be entered on Form CoR 14.1 and on the Memorandum of Incorporation must be left blank to be completed by the Commission in accordance with sub-regulation (3);
 - (bb) the incorporators may include up to four alternative names on the Notice of Incorporation, listed in order of preference; and
 - (cc) Regulations 8 and 9, read with the changes required by the context, apply with respect to each alternative name listed on the notice.
- (2) If the Notice of Incorporation indicates that the company is to be known by its registration number, or by a name that has been reserved in advance, the Commission must reduce the filing fee for the Notice of Incorporation by an amount equivalent to the fee for an application for name reservation.
- (3) If the Notice of Incorporation indicates that the company is to be known by a name that has not been reserved in advance—
 - (a) the Commission must consider each alternative name entered on Form CoR 14.1 in the listed order of preference, and must assign to the company as its name—
 - (i) the first of those names that proves to be acceptable in terms of the Act, if any; or

- (ii) the registration number in the case of a profit company, in the manner contemplated in section 14 (2)(b), if none of the listed alternative names is acceptable; and
- (b) sections 11 and 12 and regulations 8 and 9, each read with the changes required by the context, apply to the consideration of any such name by the Commission, as if the Commission were considering an application to reserve that name.
- (4) The Commission may reject a Notice of Incorporation in terms of section 13 (4) by issuing a notice to the incorporators in Form CoR 14.2 and returning to them any documents or other material filed with the Notice of Incorporation.
- (5) The registration certificate issued by the Commission in terms of section 14 (1)(b) must be in Form CoR 14.3.

15. Memorandum of Incorporation

See s. 13 (1) and s. 16

- (1) If the incorporators of a company elect to use a standard form Memorandum of Incorporation, as contemplated in section 13 (1)(a)(i), to incorporate—
 - (a) a private company, that Memorandum of Incorporation may be in either the 'short form' CoR 15.1A, or the 'long form' CoR 15.1B;
 - (b) a profit company other than a private company, that Memorandum of Incorporation must be in Form CoR 15.1B; or
 - (c) a non-profit company—
 - (i) without members, that Memorandum of Incorporation may be in either the 'short form' CoR 15.1C, or the 'long form' CoR 15.1D; or
 - (ii) with members, that Memorandum of Incorporation must be in Form CoR15.1E.
- (2) At any time after the incorporation of a company using Form CoR 15.1A in the case of a profit company, or CoR 15.1C in the case of a non-profit company, the company may substitute its Memorandum of Incorporation with a Memorandum of Incorporation in the Form CoR 15.1B, or 15.1D, respectively, by filing—
 - (a) a Notice of Amendment in Form CoR 15.2;
 - (b) a copy of the completed Memorandum of Incorporation in Form CoR 15.1B or CoR 15.1D, as applicable; and
 - (c) a copy of a special resolution of the company approving the new form of Memorandum of Incorporation

together with the appropriate filing fee, as set out in Table CR 2B.

- (3) Within 10 business days after an amendment to a company's Memorandum of Incorporation has been effected in any manner contemplated in section 16 (1), the company must file a Notice of Amendment in Form CoR 15.2, together with—
 - (a) the relevant documents required by section 16 (7); and
 - (b) the fee set out in Table CR 2B, subject to any fee waiver provided for in the Act or these regulations.
- (4) Within 10 business days after publishing a notice of alteration of its Memorandum of Incorporation, as contemplated in section 17 (1)(a), a company must file a Notice of Alteration in Form CoR 15.3, together with the fee set out in Table CR 1.
- (5) A filed translation of a company's Memorandum of Incorporation must be accompanied by Form CoR 15.4, which must include the sworn statement required by section 17 (4), together with the fee set out in Table CR 1.
- (6) A consolidated revision of a company's Memorandum of Incorporation must be accompanied by Form CoR 15.5, which must include a sworn statement, or a statement by an attorney or notary, as required by section 17 (6), together with the fee set out in Table CR 1.
- (7) A notice by the Commission requiring a company to file a consolidated revision of its Memorandum of Incorporation must be in Form CoR 15.6.

16. Rules of a company

See s. 15 (3) to (5)

- (1) Rules of a company contemplated in section 15 (3) must be filed with Form CoR 16.1 within 10 business days after being published by the company in terms of section 15 (3)(a).
- (2) Within 10 business days after any rules of a company have been put to a ratification vote in terms of section 15 (4), the company must file a Notice in Form CoR 16.2 indicating whether the rules have been ratified or rejected.
- (3) Within 10 business days after any rules of a company have been amended, altered or repealed the company must file a Notice in Form CoR 16.1 indicating clearly the extent and effect of the change.

17. Domestication of foreign companies

See s. 13 (5) to (10)

- (1) An application by a foreign company to transfer its registration to the Republic, as contemplated in section 13 (5), must be filed in Form CoR 17.1, and must be accompanied by—
 - (a) a copy of its Memorandum of Incorporation to be registered in the Republic, and a copy of its founding documentation in a foreign jurisdiction;

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- (b) a copy of the certificate of its current registration issued by the jurisdiction in which it is registered at the time of the application;
 - (c) a copy of its most recent annual financial statements;
 - (d) a copy of the shareholder resolution approving the transfer of the company's registration to the Republic, as required by section 13 (6)(b);
 - (e) satisfactory evidence that the company satisfies the requirements set out in section 13 (6) (a), and (c) to (f); and
 - (f) The fee set out in Table CR 2B.
- (2) As soon as practicable after receiving an application to transfer the registration of a foreign company, the commission must issue either—
- (a) a Notice Requiring Further Information in Form CoR 17.2, if the Commission requires more information to verify that the requirements of section 13 (6) and (7) have been satisfied; or
 - (b) a Certificate of Registration in Form CoR 17.3, if—
 - (i) the Commission has accepted the application to transfer the company's registration to the Republic; and
 - (ii) the company's Memorandum of Incorporation, including its name, is consistent with the requirements of the Act; or
 - (c) a Notice Refusing to Transfer Registration, in Form CoR 17.3, if the commission believes on reasonable grounds that the company is not entitled to transfer its registration to the Republic in terms of section 13 (5) to (10).
- (3) A foreign company may apply to the Tribunal to review a conditional certificate of registration contemplated in sub-regulation (2)(c), or a notice contemplated in sub-regulation (2)(d).

18. Conversion of Close Corporations

See Schedule 2

- (1) A Notice of Conversion of a close corporation in terms of Schedule 2 must be filed in Form CoR 18.1, and must be accompanied by—
- (a) a written statement of consent signed by members of the corporation holding, in aggregate, at least 75% of the members' interests in the corporation;
 - (b) a Memorandum of Incorporation; and
 - (c) the fee set out in Table CR 2B.

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- (2) As soon as practicable after receiving a Notice of Conversion, the Commission must issue either—
- (a) a Notice Requiring Further Information in Form CoR 18.2, if the Commission requires more information to verify that the requirements of Schedule 2 have been satisfied; or
 - (b) a Certificate of Registration in Form CoR 18.3, if—
 - (i) the Commission has accepted the Notice of conversion; and
 - (ii) the company's Memorandum of Incorporation, including its name, is consistent with the requirements of the Act.

19. Reckless trading or trading under insolvent circumstances

See s. 22

- (1) The Commission may issue a notice to show cause contemplated in section 22 (2) in Form CoR 19.1, which must clearly set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.
- (2) If a person who has received a notice in Form CoR 19.1 provides information to the Commission within 20 business days after receiving the notice, the Commission, after considering that information, must issue either—
 - (a) a notice in Form CoR 19.2 accepting the information, and confirming the company's right to continue carrying on its business activities; or
 - (b) a compliance notice, as contemplated in section 22 (3).

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20. External Companies

See s. 23

- (1) An external company must register by filing a notice in Form CoR 20.1, which must be accompanied by—
 - (a) the filing fee set out in Table CR 1;
 - (b) a certified copy of—
 - (i) the company's Memorandum of Incorporation, or similar document filed in the jurisdiction in which the external company is registered;
 - (ii) the certificate of incorporation or comparable document issued by the jurisdiction in which the company was incorporated,

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together with a translation of any of those documents, if the original is not in an official language of the Republic; and

- (c) a statement in Form Cor 20.1 setting out—
 - (i) the address of its principal office outside the Republic; and
 - (ii) the names of its directors at the time that it files that form;
 - (d) the address of its registered office in the Republic, as required by section 23(3)(b)(i)(bb) and Form CoR 20.1; and
 - (e) the name and address of the person within the Republic who has consented to accept service of documents on behalf of the external company, and has been appointed by the company to do so, together with evidence of that person's consent and appointment in Form CoR 20.1.
- (2) As soon as practicable after accepting a filed notice in terms of sub-regulation (1), and upon entering the prescribed information relating to the external company in the register in terms of section 23(5)(c), the Commission must issue a registration certificate to the external company, in Form CoR 20.2.
- (3) If any change occurs or takes place in respect of the information furnished under paragraph (e) of subregulation 1, the external company must file form CoR 21.2 advising the Commission of the change.

21. Registered office of company

See s. 23

A company or external company must notify the Commission of a change in its registered office by filing Form CoR 21.1 with the fee set out in Table CR 1, indicating the effective date of the change, which must be at least five business days after the date on which the notice is filed.

22. Company records

See s. 25

A company must notify the Commission of the location, or of any change in the location, of any company records that are not located at its registered office, by filing Form CoR 22, indicating the date as of which the records will be kept at the relevant location, which must be the date on which the notice is filed, or a later date.

23. Information to be kept concerning directors

See s. 24 (3)(b), (5) and (6)

In addition to the information required by section 24 (5), a company's record of directors must include, with respect to each director of the company—

- (a) the address for service for that director; and
- (b) in the case of a company that is required to have an audit committee, any professional qualifications and experience of the director, to the extent necessary to enable the company to comply with section 94 (5) and regulation 42.

24. Access to company information

See s. 26

- (1) Any right of access of any person to any information contemplated in section 26 or in this regulation may be exercised only in accordance with—
 - (a) the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000); or
 - (b) the provisions of section 26; and
 - (c) sub-regulations (3) to (4).
- (2) A person claiming a right of access to any record held by a company may not exercise that right until—
 - (a) a request to exercise that right has been made to the company in terms of sub-regulation (3); or
 - (b) to the extent applicable, the person's right of access to the information has been confirmed in accordance with the Promotion of Access to Information Act, 2000.
- (3) A person claiming a right of access to any record held by a company must make a written request, as contemplated in section 26 (4), by delivering to the company—
 - (a) a completed Request for Access to Information in Form CoR 24; or
 - (b) to the extent applicable any further documents or other material required in terms of the Promotion of Access to Information Act, 2000.
- (4) A company, that receives a request in terms of subsection 3(a) must, within 14 business days, accede to the request.

25. Company financial year and accounting records

See s. 27 and 28

- (1) A company must notify the Commission of a change in its financial year end by filing Form CoR 25.
- (2) A company must keep accounting records in an official language of the Republic, as necessary to provide an adequate information base sufficient to—

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- (a) enable the company to satisfy all reporting requirements applicable to it, as set out in section 28 (1) read with section 29 (1); and
 - (b) provide for the compilation of financial statements, and the proper conduct of an audit, or independent review, of its annual financial statements, as applicable for the particular company.
- (3) To the extent necessary for a particular company to comply with section 28 (1), read with section 29 (1), the accounting records of that company must include—
- (a) a record of the company's assets and liabilities including, but not limited to—
 - (i) a record of the company's non-current assets, showing for each such asset or, in the case of a group of relatively minor assets, each such group of assets—
 - (aa) the date the company acquired it, and the acquisition cost;
 - (bb) the date the company re-valued it, if applicable, and the amount of the revaluation and, if it was re-valued after the Act took effect, the basis of, and reason for, the re-valuation; and
 - (cc) the date the company disposed of or retired it, once it has been disposed of or retired, and the value of the consideration, if any, received for it and, if it was disposed of after the Act took effect, the name of the person to whom it was transferred;
 - (ii) a record of any loan by the company to a shareholder, director, prescribed officer or employee of the company, or to a person related to any of them, including the amount borrowed, the interest rate, the terms of re-payment, and material details of any breach, default or re-negotiation of any such loan; and
 - (iii) a record of any liabilities and obligations of the company including, but not limited to—
 - (aa) a record of any loan to the company from a shareholder, director, prescribed officer or employee of the company, or from a person related to any of them, including the amount borrowed, the interest rate, and the terms of re-payment, and material details of any breach, default or re-negotiation of any such loan; and
 - (bb) a record of any guarantee, suretyship or indemnity granted by the company in respect of an obligation to a third party incurred by a shareholder, director, prescribed officer or employee of the company, or by a person related to any of them, including the amount secured, the interest rate, the terms of re-payment, the expiry date, and the circumstances in which the company may be called upon to honour the guarantee, suretyship or indemnity;
 - (b) a record of any property held by the company—

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- (i) in a fiduciary capacity; or
 - (ii) in any capacity or manner contemplated in section 65 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (c) a record of the company's revenue and expenditures, including—
- (i) daily records of all money received and paid out, in sufficient detail to enable the nature of the transactions and, except in the case of cash transactions, the names of the parties to the transactions to be identified;
 - (ii) daily records of all goods purchased or sold on credit, and services received or rendered on credit, in sufficient detail to enable the nature of those goods or services and the parties to the transactions to be identified; and
 - (iii) statements of every account maintained in a financial institution in the name of the company, or in any name under which the company carries on its activities, together with vouchers or other supporting documents for all transactions recorded on any such statement; and
- (d) if the company trades in goods, a record of inventory and stock in trade, statements of the annual stocktaking, and records to enable the value of stock at the end of the financial year to be determined.
- (4) In addition to the requirements set out above, a non-profit company must maintain adequate records of all revenue received from donations, grants, and member's fees, or in terms of any funding contracts or arrangements with any party.
- (5) The accounting records required to be kept by the Act and this regulation must be kept in such a manner as—
- (a) to provide adequate precautions against—
 - (i) theft, loss or intentional or accidental damage or destruction; and
 - (ii) falsification; and
 - (b) to facilitate the discovery of any falsification; and
 - (c) to comply with any other applicable law dealing with accounting records, access to information, or confidentiality.
- (6) If a company keeps any of its accounting records in electronic form, the company must—
- (a) provide adequate precautions against loss of the records as a result of damage to, or failure of, the media on which the records are kept; and
 - (b) ensure that the records are at all times capable of being retrieved to a readable and printable form, including by converting the records from legacy to later systems, storage media, or software, to the extent necessary from time to time.

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- (7) For greater certainty, the requirements of this regulation are in addition to, and not in substitution for, any applicable requirements to keep accounting records set out in terms of any other law, or any agreement to which the company is a party.

26. Interpretation of regulations affecting transparency and accountability

- (1) For the purposes of this regulation and regulations 27 to 29—
- (a) “employee”, has the meaning set out in the Labour Relations Act, 1995 (Act 66 of 1995);
 - (b) “IFRS” means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body; and
 - (c) “IFRS for SMEs” means the International Financial Reporting Standards for Small and Medium Enterprises, as issued from time to time by the International Accounting Standards Board or its successor body;
 - (d) “independent accounting professional” when used with respect to any particular company, means a person who—
 - (i) is—
 - (aa) a registered auditor in terms of the Auditing Profession Act; or
 - (bb) a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Profession Act; or
 - (cc) qualified to be appointed as an accounting officer of a close corporation in terms of section 60 (1), (2) and (4) of the Close Corporations Act, 1984 (Act No. 69 of 1984); and
 - (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; or
 - (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; 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.
- (f) “ISRE 2400” means the International Standard for Review Engagements, as issued from time to time, by the International Auditing and Assurance Standards Board, or its successor body;
- (g) “SA GAAP” means the South African Statements of Generally Accepted Accounting Practice, as adopted from time to time by the Accounting Practices Board or its successor body.
- (2) For the purposes of regulations 27 to 30, 43, 127 and 128, every company must calculate its ‘public interest score’ at the end of each financial year, calculated as the sum of the following:—
- (a) a number of points equal to the average number of employees of the company during the financial year;
 - (b) one point for every R 1 million (or portion thereof) in third party liability of the company, at the financial year end;
 - (c) one point for every R 1 million (or portion thereof) in turnover during the financial year; and
 - (d) one point for every individual who, at the end of the financial year, is known by the company—
 - (i) in the case of a profit company, to directly or indirectly have a beneficial interest in any of the company’s issued securities; or
 - (ii) in the case of a non-profit company, to be a member of the company, or a member of an association that is a member of the company.

27. Financial Reporting Standards

See s. 29(4)

- (1) A company’s financial statements may be compiled internally or independently.
- (2) For all purposes of this regulation and regulations 28 and 29, a company’s financial statements must be regarded as having been compiled internally, unless they have been ‘independently compiled and reported’, as defined in regulation 26 (1)(e).
- (3) Nothing in this regulation precludes a company—

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- (a) that is required to prepare its financial statements to the standards of IFRS for SMEs, from preparing its financial statements to the standards of IFRS instead; or
- (b) that is not subject to any prescribed standards, from preparing its financial statements to the standards of either IFRS or IFRS for SMEs or SA GAAP.
- (4) For any particular company, any financial statements contemplated in section 28 or 29 must comply with the applicable standards for that category of company as follows:

State owned and Profit companies

Category of Companies	Financial Reporting Standard
State owned companies.	IFRS, but in the case of any conflict with any requirement in terms of the Public Finance Management Act, the latter prevails.
Public companies listed on an exchange.	IFRS
Public companies not listed on an exchange.	One of – (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's.
Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is at least 350.	One of— (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's.
Profit companies, other than state-owned or public companies— (a) whose public interest score for the particular financial year is at least 100 but less than 350; or (b) whose public interest score for the particular financial year is less than 100, and whose statements are independently compiled.	One of— (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's; or (c) SA GAAP.

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Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is less than 100, and whose statements are internally compiled.	The Financial Reporting Standard as determined by the company for as long as no Financial Reporting Standard is prescribed.
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Non-Profit Companies

Category of Companies	Financial Reporting Standard
Non profit companies that are required in terms of regulation 28 (2)(b) to have their annual financial statements audited.	IFRS, but in the case of any conflict with any requirements in terms of the Public Finance Management Act, the latter prevails.
Non profit companies, other than those contemplated in the first row above, whose public interest score for the particular financial year is at least 350.	One of— (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's.
Non profit companies, other than those contemplated in the first row above— (a) whose public interest score for the particular financial year is at least 100, but less than 350; or (b) whose public interest score for the particular financial year is less than 100, and whose financial statements are independently compiled.	One of— (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's; or (c) SA GAAP
Non profit companies, other than those contemplated in the first row above, whose public interest score for the particular financial year is less than 100, and whose financial statements are internally compiled.	The Financial Reporting Standard as determined by the company for as long as no Financial Reporting Standard is prescribed.

- (5) The Financial Reporting Standards prescribed by this regulation apply to every company with a financial year end starting on or after the effective date of the Act.

28. Categories of companies required to be audited

See s. 30 (2), read with 30 (7)

- (1) This regulation applies to a company unless, in terms of section 30 (2A), it is exempt from having its annual financial statements either audited or independently reviewed.
- (2) In addition to public companies and state owned companies, any company that falls within any of the following categories in any particular financial year must have its annual financial statements for that financial year audited:
 - (a) any profit or non-profit company if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R 5 million;
 - (b) any non-profit company, if it was incorporated—
 - (i) directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company; or
 - (ii) primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function; or
 - (c) any other company whose public interest score in that financial year, as calculated in accordance with regulation 26 (2)—
 - (i) is 350 or more; or
 - (ii) is at least 100, if its annual financial statements for that year were internally compiled.

29. Independent review of annual financial statements

See s. 30 (2) and (7)

- (1) For purposes of this regulation –
 - (a) “independent reviewer”, means a person referred to in regulation 29 (4) and who has been appointed to perform an independent review under this regulation; and
 - (b) “reportable irregularity” means any act or omission committed by any person responsible for the management of a company, which —
 - (i) unlawfully has caused or is likely to cause material financial loss to the company or to any member, shareholder, creditor or investor of the company in respect of his, her or its dealings with that entity; or

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- (ii) is fraudulent or amounts to theft; or
 - (iii) causes or has caused the company to trade under insolvent circumstances.
- (2) This regulation applies to a company, with respect to any particular financial year, unless the company—
 - (a) is exempt, in terms of section 30 (2A), from any requirement to have its annual financial statements for that year audited or reviewed;
 - (b) is required by its own Memorandum of Incorporation, or required in terms of the Act or regulation 28, to have its annual financial statements for that financial year audited; or
 - (c) has voluntarily had its annual financial statements for that year audited.
- (3) A company to which this regulation applies must have its annual financial statements independently reviewed in accordance with ISRE 2400.
- (4) An independent review of a company's annual financial statements must be carried out—
 - (a) in the case of a company whose public interest score for the particular financial year was at least 100, by a registered auditor, or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Professions Act; or
 - (b) in the case of a company whose public interest score for the particular financial year was less than 100, by—
 - (i) a person contemplated in paragraph (a); or
 - (ii) a person who is qualified to be appointed as an accounting officer of a close corporation in terms of section 60 (1), (2) and (4) of the Close Corporations Act, 1984 (Act No. 69 of 1984).
- (5) An independent review of a company's annual financial statements must not be carried out by an independent accounting professional who was involved in the preparation of the said annual financial statements.
- (6)
 - (a) An independent reviewer of a company that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that company must, without delay, send a written report to the Commission.
 - (b) The report must give particulars of the reportable irregularity referred to in paragraph (a) and must include such other information and particulars as the independent reviewer considers appropriate.
- (7)
 - (a) The independent reviewer must within three business days of sending the report to the Commission notify the members of the board of the company in writing of the

sending of the report referred to in subregulation (6) and the provisions of this regulation.

(b) A copy of the report to the Commission must accompany the notice.

(8) The independent reviewer must as soon as reasonably possible but not later than 20 business days from the date on which the report referred to in subregulation (6) was sent to the Commission —

(a) take all reasonable measures to discuss the report referred to in subregulation (6) with the members of the board of the company;

(b) afford the members of the board of the company an opportunity to make representations in respect of the report; and

(c) send another report to the Commission, which report must include —

(i) a statement that the independent reviewer is of the opinion that —

(aa) no reportable irregularity has taken place or is taking place; or

(bb) the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or

(cc) the reportable irregularity is continuing; and

(ii) detailed particulars and information supporting the statement referred to in subparagraph (i).

(9) The Commission must as soon as possible after receipt of a report containing a statement referred to in paragraph (c)(i)(cc) of subregulation (8), notify any appropriate regulator in writing of the details of the reportable irregularity to which the report relates and provide it with a copy of the report and may investigate any alleged contravention of the Act.

(10) For the purpose of the reports referred to in subregulations (6) and (8), an independent reviewer may carry out such investigations as the independent reviewer may consider necessary and, in performing any duty referred to in the preceding provisions of this regulation the independent reviewer must have regard to all the information which comes to the knowledge of the independent reviewer from any source.

(11) Where a company is liquidated, whether provisionally or finally, and an independent reviewer at the time of the liquidation -

(a) has sent or is about to send a report referred to in subregulation (6) or (8), the report must also be submitted to a provisional liquidator or liquidator, as the case may be, at the same time as the report is sent to the Commission or as soon as reasonably possible after his or her appointment; or

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(b) has not sent a report referred to in subregulation (6) or (8), and is requested by a provisional liquidator or liquidator, as the case may be, to send a report, the independent reviewer must as soon as reasonably possible –

(i) send the report together with a motivation as to why a report was not sent; or

(ii) submit a notice that in the independent reviewer's opinion no report needed to be submitted, together with a justification of the opinion.

(12) Every profession recognised by the Minister under section 60 of the Close Corporations Act, 1984 (Act 69 of 1984), whose members are entitled to perform an independent review as contemplated in subregulation (4) (b) (ii), must annually file a report with the Commission demonstrating that –

(a) it has proper mechanisms for ensuring that its members participate in continued professional development and achievement of professional competence;

(b) it has mechanisms to ensure that its members are disciplined where appropriate;

(c) it is, and is likely to continue to be, financially and operationally viable for the foreseeable future;

(d) it keeps and maintains a proper register of its members;

(e) it has in place appropriate programmes and structures to ensure that that it is actively endeavouring to achieve the objective of being representative of all sectors of the South African population; and

(f) it meets any other requirements that may be determined by the Commission from time to time.

30. Company annual returns

See s.33

(1) A company must file its annual return in Form CoR 30.1 together with the prescribed fee set out in Table CR2 B unless exempt from such payment under sub-regulation 8, within 30 business days after the anniversary of—

(a) its date of incorporation, in the case of a company that was incorporated in the Republic; or

(b) the date that its registration was transferred to the Republic, in the case of a domesticated company.

(2) A company that is required by the Act or regulation 28 to have its annual financial statements audited must file a copy of the latest approved audited financial statements on the date that it files its annual return.

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- (3) A company that is not required in terms of the Act or regulation 28 to have its annual financial statements audited may file a copy of its audited or reviewed statements together with its annual return.
 - (4) A company that is not required to file annual financial statements in terms of sub-regulation (2), or a company that does not elect to file a copy of its audited or reviewed annual financial statements in terms of sub-regulation (3), must file a financial accountability supplement to its annual return in Form CoR 30.2.
 - (5) The Commission—
 - (a) must establish a system to select and review a sample of financial accountability supplements, audited annual financial statements or independently reviewed annual financial statements that have been filed in terms of this regulation, with the objective of monitoring compliance with the financial record keeping and financial reporting provisions of the Act; and
 - (b) may issue a compliance notice to any such company 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.
 - (6) An external company must file its annual return in Form CoR 30.3 together with the prescribed fee set out in Table CR2 B, within 30 business days after the anniversary date of its registration as an external company.
 - (7) If the information furnished by the company on Form CoR 30.1, or by an external company on Form CoR 30.3, differs from the information on the Commission's register and pre-printed on Form CoR 30.1 or Form CoR 30.3 respectively by the Commission, the company or external company must file the applicable CoR form for changing the said information together with Form CoR 30.1 or CoR 30.3 respectively, and pay the appropriate prescribed fee (if any) for such change.
 - (8) A company that has been inactive during the financial year preceding the date on which its annual return becomes due under sub-regulation 1, may apply to the Commission for exemption from payment of the prescribed fee contemplated in sub-regulation 1, provided that the application is supported by the financial statements indicating that the company had in fact no turnover during that financial year.

Part D— Capitalization of Profit Companies**31. Conversion of nominal or par value shares, and related matters**

- (1) This regulation does not apply in respect of a pre-existing company contemplated in Item 6 (1) of Schedule 5.
- (2) A pre-existing company may not authorise any new par value shares, or shares having a nominal value, on or after the effective date.
- (3) If, immediately before the effective date, a pre-existing company has any authorised class of par value or nominal value shares from which it has not issued any shares before the effective date, or from which it has issued shares, all of which had been re-acquired by the company before the effective date—
 - (a) the company must not issue any shares of that class on or after the effective date, until it has converted that class of shares in accordance with paragraph (b); and
 - (b) the board of the company may convert that class, or those classes, of authorised shares to shares having no nominal or par value, by adopting a board resolution to do so, and filing a notice of that resolution in Form CoR 31, without charge, at any time after the effective date.
- (4) Sub-regulations (5) to (11) do not apply to a conversion contemplated in sub-regulation (3)(b).
- (5) If, immediately before the effective date, a pre-existing company has any outstanding issued shares of one or more classes of par value or nominal value shares, the company—
 - (a) may not increase the number of those authorised shares;
 - (b) may issue further authorised shares of that class at any time on or after the effective date, until it has published a proposal in terms of sub-regulation (6) to convert that class of shares; and
 - (c) may file without charge an amendment to its Memorandum of Incorporation to effect a conversion of that class, or those classes, of shares, after adopting that amendment in accordance with sub-regulations (6) to (11).
- (6) An amendment to a pre-existing company's Memorandum of Incorporation to effect a conversion of one or more classes of shares in terms of sub-regulation (5) may be proposed at any time by the company's board, and—
 - (a) must not be designed substantially or predominantly to evade the requirements of any applicable tax legislation; and
 - (b) will have been adopted only if it is approved by—
 - (i) a special resolution adopted by the holders of shares of each such class of shares; and

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- (ii) a further special resolution adopted by a meeting of the company's shareholders called for that purpose.
- (7) The board must cause a report to be prepared in respect of a proposed resolution to convert any nominal or par value shares in terms of sub-regulation (6), which must at a minimum—
- (a) state all information that may affect the value of the securities affected by the proposed conversion;
 - (b) identify the 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 of the holders of the company's securities affected by the proposed conversion, 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.
- (8) The company must—
- (a) publish a resolution contemplated in sub-regulation (6), together with the report required by sub-regulation (7), to the shareholders before the meeting at which the resolution will be considered, with at least as much notice as is required for a special resolution of that company's shareholders; and
 - (b) file a copy of the proposed resolution and report with the Commission and with the South African Revenue Service, at the same time that the proposal is published to the shareholders.
- (9) At any time before a meeting called to consider a company's proposal contemplated in sub-regulation (6)—
- (a) the company may, at the option of the company, apply to a court for a declaratory order that the proposal satisfies the requirements of the Act;
 - (b) a shareholder affected by the proposal, who believes that the proposal does not adequately protect their rights, or otherwise fails to satisfy the requirements of the Act, may apply to the court for an order; or
 - (c) the commission, or the South African Revenue Service, may apply to the court for a declaratory order contemplated in section 6 (1), on the grounds that the proposal contravenes sub-regulation (6) (a);
- and the court may make any order that is just and reasonable in the circumstances.
- (10) If an application is made to a court in terms of sub-regulation (9), the company may not put the proposed resolution to a vote until the court proceedings are completed and the time for any appeal or review of any court order has expired.

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Regulation 31

- (11) If, after considering an application in terms of sub-regulation (9), the court declares that the proposed resolution—
- (a) satisfies the requirements of the Act—
 - (i) the company may put the proposal to a vote; and
 - (ii) the decision of the court does not restrict, limit or negate the right of any shareholder to vote against that resolution; or
 - (b) does not satisfy the requirements of the Act, the company must not proceed with a vote on the proposal, except to the extent that the court order provides otherwise.

Part E— Securities Registration and Transfer**32. Company securities registers**

See s. 50 (1)(b)

- (1) The securities register of a profit company required in terms of section 24 (4)(a), read with section 50 (1)(b), must be kept in one of the official languages of the Republic, and must comprise—
 - (a) for every class of authorised securities, a record of—
 - (i) the number of securities authorised, and the date of authorisation;
 - (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 of the person to, from or by whom the securities were issued, re-acquired or surrendered, as the case may be; and
 - (v) in the case of uncertificated securities, a unique identifying 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 authorised 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 in respect of each person to whom the company has issued securities, or to whom securities of the company have been transferred—
 - (a) the person's—

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Regulation 32

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- (i) name and business, residential or postal address, as required by section 50 (2) (b) (i); and
 - (ii) the person's email address if available, unless the person has declined to provide an email address;
 - (b) an identifying number that is unique to that person;
 - (c) 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
 - (d) in respect of each issue or transfer of securities to that person—
 - (i) the date on which the securities were issued or transferred to the person;
 - (ii) the number and class of securities issued or transferred to the person;
 - (iii) the distinguishing number or numbers of the securities issued or transferred to the person, if the securities are held in certificated form;
 - (e) the date on which any securities that had been issued or transferred to the person were subsequently—
 - (i) transferred by that person, or by operation of law, to another person; or
 - (ii) re-acquired by, or surrendered to, the company in terms of any provision of the Act or the Memorandum of Incorporation; and
 - (f) 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) the number, class and in the case of certificated securities, the distinguishing numbers of the securities; and
 - (iii) for each person who holds a beneficial interest in the securities, the extent of the person's interest in the securities, together with that person's—
 - (aa) name and unique identifying number;
 - (bb) business, residential or postal address;

- (cc) email address if available, unless the person has declined to provide an email address.
- (4) 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.
- (5) If a company's securities register is kept in electronic form, the company and, in the case of an uncertificated securities register, the relevant Participant or Central Securities Depository, as the case may be, 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 systems, storage media, or software, to the extent necessary from time to time.
- (6) In so far as the identity number and e-mail address of a person may be entered into a register kept under this regulation, such information may, at the instance of the company, Central Securities Depository or relevant Participant as the case may be, be regarded as confidential.
- (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.

33. Instruction to convert certificated securities into uncertificated securities

See 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 provide complete and accurate information about the securities to be converted; and
- (3) An action that—

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- (a) is taken by a person authorised to take that action, and carried out in accordance with the Act, regulation 34, and this regulation; and
 - (b) results in a consequence listed in section 55 (1) (a) to (c),
- is not “an unlawful action” as contemplated in section 55 (1).

34. Duties of company

See 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
 - (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.

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- (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.
- (5) An action that—
- (a) is taken by a person authorised to take that action, and carried out in accordance with the Act, regulation 33, and this regulation; and
 - (b) results in a consequence listed in section 55 (1) (a) to (c),
- is not “an unlawful action” as contemplated in section 55 (1).

Part F— Governance of Companies**35. Pre-incorporation contracts**

See s. 21 (3)

- (1) A person may give notice to a company of a pre-incorporation contract or action contemplated in section 21 (1), by filing, and delivering to the company, a notice in Form CoR 35.1.
- (2) If the board of a company has completely or partially rejected, or completely or partially ratified, a pre-incorporation contract or action of which it has received notice, as contemplated in section 21 (3), the company must, within five business days—
 - (a) file a notice of its decision with respect to that contract or action in Form CoR 35.2; and
 - (b) deliver a copy of that notice to each person who is a party to the contract or materially affected by the action.

36. Uniform standards for providing information

- (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, 58, 115 (8), or 165 (2) by delivering a completed Form CoR 36.1 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, or 62 (1), by delivering a completed Form CoR 36.2 to each registered security holder, except to the extent that the requirements of a central securities depository provide otherwise.
- (3) A registered holder of any securities in which any other person has a beneficial interest may give notice to each person who has such an interest, as required by section 56 (11), by delivering a completed Form CoR 36.3 to each such person, except to the extent that the requirements of a central securities depository provide otherwise.
- (4) 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 36.4.

37. Record dates

See 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) Except as contemplated in sub-regulation (1), a company must publish a notice of a record date for any matter by—

- (a) delivering a copy to each registered holder of its securities; and
- (b) posting a conspicuous copy of the notice—
 - (i) at its principal office;
 - (ii) on its website, if it has one; and
 - (iii) in the case of a listed company, on any automated system of disseminating information maintained by the exchange.

38. Prescribed officers of companies

See s. 66 (10)

- (1) Despite not being a director of a particular company, a person is a “prescribed officer” of the company for all purposes of the Act if that person—
 - (a) exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or
 - (b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company.
- (2) This regulation applies to a person contemplated in sub-regulation (1) irrespective of any particular title given by the company to—
 - (a) an office held by the person in the company; or
 - (b) a function performed by the person for the company.

39. Directors and register of persons disqualified from serving as director

See s. 69(8)(b)(iv) and s. 70 (6)

- (1) A notice that a person has become a director of a company, as required by section 70 (6) must be filed in Form CoR 39, within 10 business days after appointment.
- (2) Within 10 business days after a person ceases to be a director of a company or external company, or after the company or external company becomes aware that any information respecting the director has changed, the company must file a notice of that change in Form CoR 39.
- (3) In addition to the court orders received from the Registrar of the Court under section 69(11A), the Commission may for purposes of maintaining the register of persons disqualified from serving as directors, obtain relevant information from the official records of the clerk of the magistrates court, the Master, the South African police services, any regulatory authority or any institution that regulates any profession in the Republic.

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- (4) 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.