

Audit and accounting requirements of the new Companies Act

An overview of relevant aspects of the Companies Act, No.71 of 2008, and matters to consider regarding its implementation.

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Steering Point

Companies Act series #2



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Introduction

The Companies Act No. 71 of 2008 (the Act), including amendments effected by the Companies Amendment Act, 2011 (the Amendment Act), and the Companies Regulations, 2011 (the Regulations) came into effect on 1 May 2011.

The Act introduces a multitude of requirements for companies in the areas of auditing and accounting. While the Companies Act No. 61 of 1973 (the old Act) required all companies to be audited, the new Act introduces less onerous assurance requirements for certain companies based on factors such as the category of the company and whether an audit of the company would be in the public interest.

There has been significant debate in the media about these amended audit requirements as well as the Act's introduction of an independent review for companies not requiring an audit.

In the current edition of this series, we discuss the implications of selected sections to assist directors and management of companies to get to grips with the auditing and accounting requirements of the Act.

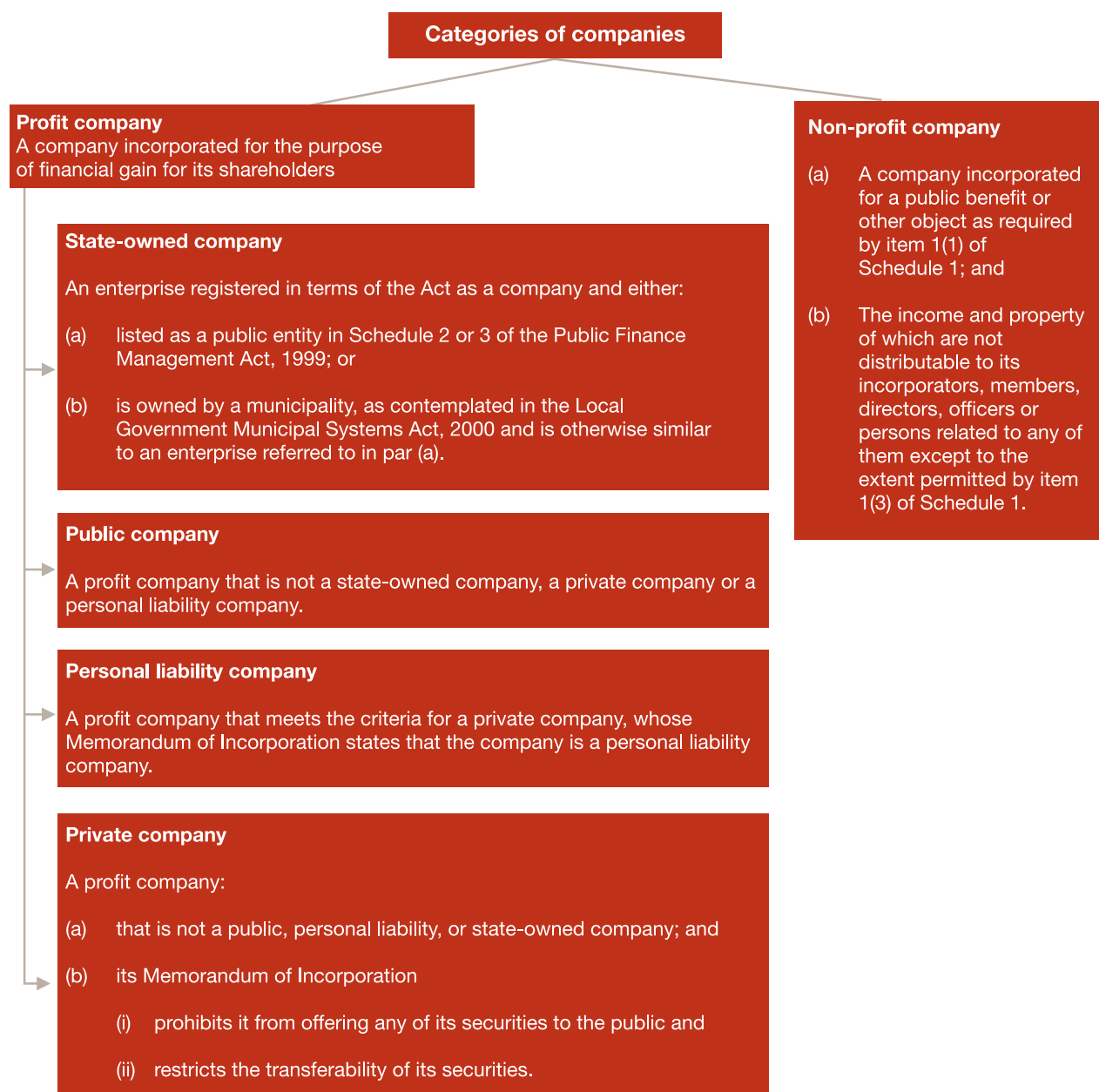


Determining the category of your company¹

The different types of companies that may be formed in terms of the Act, are illustrated below. The Act introduces two main categories of companies, namely, profit and non-profit companies, effectively doing away with the concepts of 'widely held' and 'limited interest' companies introduced by the Corporate Laws Amendment Act, 2006 (the CLAA). It further provides for four subcategories of profit companies, namely state-owned, private, personal liability and public companies.

Each company, including any company which is a subsidiary, will need to determine its category in accordance with the Act. This represents a departure from the requirements of the CLAA, which automatically classified subsidiaries of widely held companies as widely held.

Determining the category of your company is the initial step in establishing whether the requirement to be audited or independently reviewed will apply. This will also have a bearing on the financial reporting standards applicable to the company, as discussed later in this publication.



¹ See Sections 1 and 8 of the Act

Considering the impact on close corporations²

After 1 May 2011, no further registrations of close corporations are possible, but existing close corporations may convert to companies by filing, amongst other required documents, a notice of conversion. Conversion is, however, not compulsory and close corporations will continue to exist until deregistration or dissolution in terms of the Close Corporations Act, 1984. Close corporations will be treated as private companies for selected sections of the Act, such as when determining whether the company is required to be audited or independently reviewed and the applicable financial reporting standards. Schedule 3 to the Act sets out the specific sections of the Close Corporations Act, 1984 that are repealed by the new Companies Act, as well as the sections which continue to apply.

Financial year of the company³

A company's financial year is its annual accounting period and it ends on the date set out in the company's notice of incorporation. The first financial year of a company and any financial year in which the board of a company decides to change the company's financial year end, may be a period longer than 12 months, but may not be more than 15 months in duration.



² See Schedule 3 of the Act

³ See Section 27 of the Act

Accounting records⁴

The Act defines accounting records to be information in written or electronic form concerning the financial affairs of a company, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements. All companies are required to keep accurate and complete accounting records, in one of the official languages of the Republic. These records must be kept at, or be accessible from, the registered office of the company.

A company must maintain such accounting records as are necessary to enable it to prepare financial statements as

required by the Act, or any other law. Such records must include any prescribed accounting records which must be kept in the prescribed manner and form. The Regulations prescribe that a company must keep accounting records which are necessary to provide an adequate information base, sufficient to enable the company to satisfy all applicable reporting requirements. These records must allow for the proper conduct of an audit or independent review, as applicable.

The Regulations also prescribe, that to the extent necessary for a particular company to comply with its obligations to maintain adequate records in terms of the Act, the accounting records of a company must include those outlined below.

A record of the company's assets and liabilities including, but not limited to:

- 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 –
 - The date the company acquired it, and the acquisition cost;
 - 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
 - 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;
- 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 repayment, and material details of any breach, default or re-negotiation of any such loan; and
- A record of any liabilities and obligations of the company including, but not limited to–
 - 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
 - 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 repayment, the expiry date and the circumstances in which the company may be called upon to honour the guarantee, suretyship or indemnity.

A record of any property held by the company:

- In a fiduciary capacity, or
- In any capacity or manner contemplated in Section 65 (2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

A record of the company's revenue and expenditures, including:

- 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;
- 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
- 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.

A record of the company's inventory and stock in trade:

- 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.

Application to non-profit companies:

In addition to the requirements set out above, a non-profit company must maintain adequate records of all revenue received from donations, grants, and members' fees, or in terms of any funding contracts or arrangements with any party.

⁴ See Sections 1, 24 and 28 read with the transitional arrangements in Schedule 5 of the Act

Required accounting records must be maintained by the company for the current financial year and for the previous seven completed financial years of the company. There may be instances in which the Act introduces retention periods for pre-existing companies (i.e. companies which existed on the effective date of the Act) which did not previously apply. To address this, the transitional provisions in Schedule 5 provide that a pre-existing company will not be in contravention of the Act where it fails to maintain the required records for the seven-year period if the company disposed of that record before the effective date and at the time of disposal, it was not required to continue to maintain that record in terms of any public regulation.

The Act provides that it is an offence for a company, with an intention to deceive or mislead any person, to fail to keep accurate or complete accounting records or to keep records other than in the prescribed manner or form. It is an offence for a company, or a person, to falsify accounting records.

Requirements for financial statements including the annual financial statements⁵

The Act defines a financial statement as including:

- The annual financial statements and provisional annual financial statements;
- Interim or preliminary reports;
- Group and consolidated financial statements in the case of a group of companies; and
- Financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on.

If a company provides any financial statements to any person for any reason, those statements must satisfy any prescribed financial reporting standards as to form and content (prescribed financial reporting standards are discussed later in this publication). Such financial statements must present fairly the state of affairs and business of the company, and explain the transactions and financial position.

A company is required to prepare its annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting. This notice must include the financial statements to be presented or a summarised form thereof.

The Act does not require the annual financial statements to be distributed to each shareholder. It states, however, that in addition to the rights permitting access to company

records, a person who holds or has a beneficial interest in any securities issued by a company is entitled:

- Without demand to receive a notice of the publication of any annual financial statements of the company required by this Act, setting out the steps required to obtain a copy of those statements; and
- On demand to receive without charge one copy of any annual financial statements of the company required by this Act.

The annual financial statements must be approved by the board and signed by an authorised director and must be presented to the first shareholder's meeting after such approval.

The Act further provides that a person will be guilty of an offence if that person is a party to the preparation, approval, dissemination or publication of any financial statements that fail in a material way to comply with certain requirements in the Act or are materially false or misleading. This offence is subject to Section 214(2) – *False statements, reckless conduct and non-compliance*.

The Act specifies disclosures that a company's financial statements must include. These disclosure requirements are outlined in Appendix A.

Schedule 4 of the old Act contained an extensive list of disclosure requirements for statutory financial statements. However, the new Act is not as prescriptive and does not contain an equivalent schedule.

It is interesting to note that the Act introduces the requirement to disclose directors' emoluments per director and individual holding any prescribed office in the company. This requirement is applicable in the annual financial statements of each company that is required to be audited in terms of the Act or the Regulations.

While the Act is applied prospectively, and such disclosure will be required in annual financial statements for financial years ending after 1 May 2011, the requirement for the annual financial statements to comply with prescribed financial reporting standards will mean that comparative emolument disclosure will be required in these financial statements.

Such comparative information must be presented to comply with International Accounting Standard 1 – *Presentation of financial statements* – paragraph 38 which stipulates that an entity shall disclose comparative information in respect of the previous period for all amounts reported in the current period's financial statements. An entity shall include comparative information for narrative and descriptive information when it is relevant to an understanding of the current period's financial statements.

⁵ See Sections 1, 29, 30, 31 and 214 read with transitional arrangements in Schedule 5 of the Act

Group financial statements

The old Act placed an obligation on the company to prepare group financial statements. The new Act makes no specific reference to a requirement to prepare group financial statements, but rather requires a company's financial statements, to satisfy any prescribed financial reporting standards as to form and content. For example, a company with subsidiaries, which is required to comply with International Financial Reporting Standards, would be required to prepare consolidated financial statements that comply with the requirements of that standard.

There has been a further shift in the application of the requirement to prepare statutory financial statements in a group situation. The old Act provided an exemption from the preparation of group financial statements for a company which had subsidiaries, and which itself was a wholly owned subsidiary of another company incorporated in the Republic. The new Act does not provide such exemption. Similarly, the exemption from the preparation of a director's report for wholly owned subsidiaries, in terms of the old Act, has not been retained.

Companies reporting in terms of IFRS International Accounting Standard (IAS) 27 – *Consolidated and separate financial statements* may qualify for an exemption from the preparation of consolidated financial statements where they satisfy the criteria for exemption in terms of Paragraph 10 of that standard. Companies should review their eligibility for this exemption in terms of that standard.

Interim financial statements and summarised information

The requirement for the preparation of interim or provisional financial statements for a widely held company has not been retained in the Act, despite the fact that the definition of financial statements includes interim, provisional and preliminary financial statements.

Transitional arrangements

Schedule 5 clarifies the applicability of the new Act to a previous year's annual financial statements and requires that if immediately before the effective date of the Act, a particular pre-existing company has passed its financial year end but has not completed the requirements in terms of the old Act for publishing, audit and approval of its annual financial statements for that financial year:

- The provisions of the old Act continue to apply with respect to the publishing, audit and approval of those statements; and
- The provisions of the new Act will apply to each subsequent financial year end and annual financial statements of that company.

A comparison between the Act, the *King Report on Governance of 2009* (King III) and the JSE Limited Listings Requirements as applicable to interim financial statements and summarised information is presented in Appendix B.

Compiling the financial statements⁶

A company's financial statements may be compiled internally or independently. Annual financial statements will be considered to be independently compiled and reported when they are prepared by an independent accounting professional on the basis of financial records provided by the company, and they are compiled in accordance with any relevant financial reporting standards (prescribed financial reporting standards are discussed later in this publication). In all other cases, a company's annual financial statements will be considered to be compiled internally.

Whether a company elects to internally compile its annual financial statements or to engage an independent accounting professional to perform this service will have an impact on whether such company is required to be audited or independently reviewed, as discussed later in this publication.

Definition: Independent accounting professional

An independent accounting professional, when used with respect to any particular company, means a person who is:

- A registered auditor in terms of the Auditing Profession Act, 2005;
- A member in good standing of a professional body that has been accredited in terms of Section 33 of the Auditing Profession Act, 2005; or
- 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;

And such person meets the independence criteria described below if the person:

- Does not have a personal financial interest in the company or a related or inter-related company; and
 - Is not 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
 - Is not 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
- Is not related to any person who falls within the independence criteria described above (the terms related and inter-related are defined in Section 2 of the Act).

⁶ See Regulation 26

Prescribed financial reporting standards⁷

The Act requires that any financial statements prepared by a company must satisfy financial reporting standards, if such standards are prescribed. The Minister of Trade and Industry has prescribed financial reporting standards in the Regulations. The Act provides that the Minister must establish a Financial Reporting Standards Council who will, amongst other functions, advise the Minister on matters relating to financial reporting standards.

The financial reporting standards applicable to a company are now determined in the Regulations and are based on the category of the company, and for certain categories of companies, on its public interest score.

Determining the public interest score

For the purposes of determining the financial reporting standards applicable to a company, whether certain categories of companies will be required to be audited or independently reviewed and whether such companies are required to appoint a social and ethics committee, the Regulations require every company to calculate its public interest score at the end of each financial year. Every company must also disclose this score on its annual return, which means that the calculation of the public interest score is relevant to all companies, including public and state-owned companies.

The public interest score of a company will be calculated as the sum of the following:

Example		
Element	Illustrative Data	Points
Points equal to the average number of employees of the company during the financial year.	100 employees on average	100
One point for every R1 million (or portion thereof) in third-party liability of the company at the financial year end.	R50 000 000	50
One point for every R1 million (or portion thereof) in turnover during the financial year.	R250 000 000	250
One point for every individual who, at the end of the financial year, is known by the company:	40 individuals	40
<ul style="list-style-type: none"> In the case of a profit company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or 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. 		
Total		440

The Regulations define the term 'employee' as having the meaning set out in the Labour Relations Act, 1995. The Labour Relations Act, in turn, defines an employee as meaning:

- Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- Any other person who in any manner assists in carrying on or conducting the business of an employer.

Section 200A of the Labour Relations Act further elaborates on the meaning of the term 'employee'.

The Regulations do not define the terms 'turnover' and 'third-party liability' for the purposes of this computation. While Regulation 164 does define 'turnover', it expressly states that this definition is solely for the purpose of calculating administrative fines, in terms of Section 175.

The public interest score computation refers to the term 'beneficial interest', which is a defined term in the Act.

When used in relation to a company's securities, this term means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to:

- Receive or participate in any distribution in respect of the company's securities;
- Exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- Dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002.

Section 56 of the Act deals further with the concept of beneficial interest, including beneficial interests held via a nominee on behalf of a person.

⁷ See Sections 1, 56, 203 and 204 of the Act read with Regulations 26 and 27

Summary of the prescribed financial reporting standards

The table below summarises the financial reporting standards applicable to the various categories of companies:

Category of company	Prescribed financial reporting standard		
	IFRS	IFRS for SMEs	SA GAAP
Public companies – listed on an exchange	X		
Public companies – not listed on an exchange	X	X	
State-owned companies (In the case of any conflict with any requirement in terms of the Public Finance Management Act, 1999 (PFMA), the PFMA prevails)	X		
Non-profit companies incorporated: <ul style="list-style-type: none"> 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 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. (In the case of any conflict with any requirement in terms of the PFMA, the PFMA prevails)	X		
Other companies (profit and non-profit) whose public interest score is at least 350	X	X	
Other companies (profit and non-profit) whose public interest score is at least 100 but less than 350 and whose financial statements are either internally or independently compiled	X	X	X
Other companies (profit and non-profit) whose public interest score is less than 100 and whose financial statements are independently compiled	X	X	X
Other companies (profit and non-profit) whose public interest score 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.		

The Accounting Practice Board (APB) recently issued a communication reflecting its decision to assess the need for SA GAAP in its current form in light of the Regulations. It is considering whether it is appropriate and/or necessary to continue issuing IFRS as SA GAAP given the changes to the Act. The APB also alerted companies presently using SA GAAP that they might not be able to continue using this standard in the future, even if SA GAAP is not discontinued.

In the interim, it is important to note that companies currently applying SA GAAP need to start considering their public interest score and, depending thereon, which financial reporting framework they are permitted and wish to apply.

SA GAAP is a replica of IFRS, but does not require the application of IFRS I(AC 138) – *First-time Adoption of International Financial Reporting Standards*. Thus, these entities need to start thinking about the implications of converting to IFRS, or IFRS for SMEs (if within the scope), once SA GAAP is no longer available for use, and the impact of first-time adoption of either of these frameworks.

Definitions: Financial reporting standards

- Regulation 26 provides the following definitions:
- IFRS means the International Financial Reporting Standards as adopted from time to time by the International Accounting Standards Board or its successor body;
- IFRS for SMEs means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the International Accounting Standards Board or its successor body. (This standard may only be applied provided that the company meets the scoping requirements outlined in the IFRS for SMEs); and
- 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.

Effective date

The Financial Reporting Standards prescribed in the Regulations apply to every company with a financial year end starting on or after the effective date of the Act, namely for financial years starting on or after 1 May 2011.



The requirement to be audited or independently reviewed⁸

Companies that require an audit

Section 90 of the Act requires a public or state-owned company, upon its incorporation, and each year at its annual general meeting, to appoint an auditor. All public and state-owned companies are thus required to be audited.

The Regulations provide that in addition to public and state-owned companies, where the audit of any other company is desirable in the public interest as indicated by prescribed criteria in any particular financial year, those annual financial statements must be audited. The prescribed criteria indicating that an audit is required are as follows:

- In the ordinary course of its primary activities, a profit or non-profit company 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 R5 million;
- A non-profit company which was incorporated:
 - 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
 - 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;
- Any other company whose public interest score in that financial year is 350 or more; or
- Any other company whose public interest score in that financial year is at least 100 (but less than 350) and whose annual financial statements for that year were internally compiled.

A private, personal liability or non-profit company may voluntarily elect an audit:

- By including an audit requirement in the company's memorandum of incorporation;
- By a shareholders' resolution; or
- In terms of a board decision.

In the event that a company voluntarily elects to have its annual financial statements for any particular year audited, by shareholder's resolution or in terms of a board decision, such company will not automatically be required to comply with the enhanced accountability requirements in Chapter 3 of the Act relating to auditors, audit committees or company secretaries, unless its memorandum of incorporation provides otherwise.

A company which voluntarily elects to be audited by including an audit requirement in its memorandum of incorporation will be required to comply with section 90 of the Act, which deals with the appointment of the auditor. All other sections in Chapter 3 relating to the resignation, rotation, rights and restricted functions of the auditor, as well as the sections relating to audit committees and company secretary, will not apply.

Any company, whose memorandum of incorporation requires compliance with certain or all of the provisions in Chapter 3 will be required to comply with the enhanced accountability requirements in this Chapter, to the extent that the company's memorandum of incorporation so requires.

In the case of listed companies, the JSE Limited Listings Requirements clarify that all subsidiaries of listed companies (including applicants) must continue to be audited regardless of their classification within the Act. The memorandums of incorporation of such subsidiaries must be amended to make provision for the audit. In applying this requirement, companies should have regard to the definition of a subsidiary in the JSE Listings Requirements.

Companies that require an independent review

Certain categories of private, personal liability and non-profit companies that are not subject to audit will be required to have their annual financial statements independently reviewed. This independent review must be performed in accordance with ISRE 2400, the International Standard for Review Engagements, as issued from time to time by the International Auditing and Assurance Standards Board or its successor body. The Regulations prescribe the categories of companies to which the independent review requirement will apply as follows:

- Private, personal liability and non-profit companies whose public interest score in that financial year is at least 100 (but less than 350) and its annual financial statements for that year were independently compiled; and
- Private, personal liability and non-profit companies whose public interest score in that financial year is less than 100.

⁸ See Sections 30 and 90 of the Act read with Regulations 28 and 29

The Regulations clarify that the following categories of companies will not be required to perform an independent review:

- A company that is exempt in terms of Section 30(2A) of the Act (discussed later in this publication);
- A company that is required by its own memorandum of incorporation, or in terms of the Act or by Regulation, to have its annual financial statements for that financial year audited; or
- A company that has voluntarily had its annual financial statements for that year audited.

The Regulations provide for the qualification of persons permitted to perform an independent review of a company's annual financial statements, which is shown in the table below:

Qualification of persons permitted to perform an independent review

Independent reviewer	Public interest score at least 100 and annual financial statements independently compiled	Public interest score less than 100
A registered auditor in terms of the Auditing Profession Act, 2005;	X	X
A member in good standing of a professional body that has been accredited in terms of Section 33 of the Auditing Profession Act, 2005; or	X	X
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.		X
The independent reviewer must meet the independence requirements set out in Regulation 26(1)(d) for an independent accounting professional, as discussed earlier in this publication.		
The independent reviewer may not be the same individual who was involved in the preparation of the said annual financial statements and who acted as the independent accounting professional with respect to those annual financial statements.		

Companies exempt from independent review

A company may qualify for an exemption from having its annual financial statements independently reviewed in terms of Section 30(2A) of the Act. The Act provides that if, with respect to a particular company, every person who is a holder of, or has a beneficial interest in any securities issued by that company, is also a director of the company, that company is exempt from the requirements in Section 30 of the Act to have its annual financial statements independently reviewed.

This exemption:

- Does not apply to the company if it falls into a class of company that is required by the Regulations to have its annual financial statements audited; and

- Does not relieve the company of any requirement to have its financial statements audited or reviewed in terms of another law or in terms of any agreement to which the company is a party.

While the definition of person in Section 1 includes a juristic person, Section 69 clarifies that juristic persons are ineligible from being appointed as directors. Companies in which beneficial interest holders are juristic persons, for example, in a group situation where the shares in a subsidiary company are held by its holding company, the holding company will be disqualified from being appointed as a director. As a result, the subsidiary company will not qualify for the exemption from independent review.

Reportable irregularities⁹

The Regulations introduce reporting requirements for independent reviewers with regard to any reportable irregularities. While the concept of a reportable irregularity currently exists for registered auditors in terms of the Auditing Profession Act, 2005, the requirement to report as a result of performing an independent review, where the individual is not also appointed as auditor of the company, is new. In fact, in the past, where an individual auditor performed an engagement to review financial statements in terms of ISRE 2400 at a client that was not also an audit client, there was no reporting responsibility in terms of the Auditing Profession Act, 2005, to report any irregularities.

It is also interesting to note that in terms of the Auditing Profession Act, 2005, the auditor must refer to the reportable irregularity in the audit report, while the Act does not contain a requirement for the independent reviewer to refer to the reportable irregularity in concluding his review opinion.

The table below compares reportable irregularities required to be reported in terms of the Companies Act, 2008 and the Auditing Profession Act, 2005:

	Companies Act, 2008	Auditing Profession Act, 2005
Definition of reportable irregularity	<p>Any act or omission committed by any person responsible for the management of a company, which –</p> <ul style="list-style-type: none"> 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 is fraudulent or amounts to theft; or causes or has caused the company to trade under insolvent circumstances. 	<p>Any unlawful act or omission committed by any person responsible for the management of an entity, which –</p> <ul style="list-style-type: none"> has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity; or is fraudulent or amounts to theft; or represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof.
The reporter	An independent reviewer of a company	An individual registered auditor, referred to in section 44(1) (a) of an entity
	that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that company/entity must, without delay, send a written report.	
The recipient of the report	The Commission	The Independent Regulatory Board for Auditors (“IRBA”)
The initial report content	The report must give particulars of the reportable irregularity and must include such other information and particulars as the independent reviewer/registered auditor considers appropriate.	
Communication to the company	<p>The independent reviewer/registered auditor must notify the members of the board/members of the management board* of the company/entity, in writing, of the sending of the report to the Commission/IRBA and include the provisions of the regulation/section.</p> <p>A copy of the report to the Commission/IRBA must accompany the notice.</p> <p>Communication to the Company must occur within three business days of sending the report to the Commission/IRBA</p>	
The process for subsequent reporting	<p>The independent reviewer must as soon as reasonably possible but not later than 20 business days from the date on which the initial report referred to above was sent to the Commission –</p> <ul style="list-style-type: none"> take all reasonable measures to discuss the initial report with the members of the board/members of the management board of the company/entity; afford the members of the board/members of the management board of the company/entity an opportunity to make representations in respect of the report; and send another report to the Commission/IRBA. 	<p>The registered auditor must as soon as reasonably possible but no later than 30 days from the date on which the initial report referred to above was sent to the IRBA –</p>

⁹ See Regulation 29

Annual returns¹⁰

Every company must file an annual return in the prescribed form (CoR 30.1) together with the prescribed fee set out in Table CR2 B of the Regulations, unless exempt from such payment, within 30 business days after:

- The anniversary of its date of incorporation, in the case of a company incorporated in the Republic; or
- The date that its registration was transferred to the Republic, in the case of a domesticated company.

Any company that has been inactive during the financial year preceding the date on which its annual return becomes due, may apply to the Commission for an exemption from payment of the fee, provided that the application is supported by the financial statements indicating that the company had in fact no turnover during that financial year.

A company that is required by the Act or Regulations 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. Alternatively, a company that is not required in terms of the Act or Regulations to be audited, may elect to file a copy of its audited or reviewed statements together with the return. Finally, a company which does not file annual financial statements as described above, must file a financial accountability supplement to its annual return.

The Commission 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, with the objective of monitoring compliance with the financial record keeping and financial reporting provisions of the Act. The Commission 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 specific provisions of the Act.

Each year, in its annual return, every company must designate a director, employee or other person responsible for the company's compliance with the requirements of Chapter 2 Part C of the Act – *Transparency, accountability and integrity of companies* and Chapter 3 – *Enhanced accountability and transparency*, if these apply to the company. This function must be carried out by the company secretary where a company is required to appoint a company secretary. In all other instances, another suitable individual must assume this responsibility.

Enhanced accountability¹¹

Public and state-owned companies are required to comply with the enhanced accountability requirements set out in Chapter 3 of the Act, subject to specific exemptions allowed by the Act. Chapter 3 includes the appointment of the company secretary, auditor and audit committee.

A private, personal liability or non-profit company is required to comply with Chapter 3 only to the extent that the company's memorandum of incorporation so requires. If a company is required by the Act or the Regulations to have its annual financial statements audited every year, the provisions of Part C of the chapter, relating to auditors, will apply.



¹⁰ See Sections 33 and 88 of the Act read with Regulation 30

¹¹ See Sections 9, 34 and 84 read with Chapter 3 of the Act

Requirements for auditors¹²

	Requirement of the Act and Regulations
Appointment of the auditor	<ul style="list-style-type: none"> • Public or state-owned company: <ul style="list-style-type: none"> – Appointed each year at the annual general meeting. • Private, personal liability or non-profit company that is required by its memorandum of incorporation, the Act or the Regulations to have its annual financial statements audited every year: <ul style="list-style-type: none"> – Appointed at the annual general meeting at which the requirement first applies to the company and at each annual general meeting thereafter. • To be appointed as auditor a person or firm: <ul style="list-style-type: none"> – Must be a registered auditor; – Must not be prohibited from being appointed; and – Must be acceptable to the company's audit committee as being independent of the company, whether such audit committee was appointed as required by the Act or voluntarily. • The following persons or firms are prohibited from being appointed as the auditor of a company: <ul style="list-style-type: none"> – A director or prescribed officer of the company; – An employee or consultant of the company who was or has been engaged for more than one year in the maintenance of any of the company's financial records or the preparation of any of its financial statements; – A director, officer or employee of a person appointed as company secretary in terms of the Act; – A person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the company; – A person who, at any time during the five financial years immediately preceding the date of appointment, was a person contemplated in any of the subparagraphs above; or – A person related to a person contemplated in the subparagraphs above. <p>Note: If a company appoints a firm as an auditor, the individual determined by that firm, in terms of section 44(1) of the Auditing Profession Act, 2005, to be responsible for performing the functions of auditor must satisfy the requirements.</p>
Resignation of the auditor	<ul style="list-style-type: none"> • Resignation is effective when the notice is filed. • Before filling a vacancy, the board must propose the name of at least one registered auditor to be considered for appointment to the company's audit committee within 15 business days of the vacancy arising. • The board may proceed in making an appointment of such proposed person if within five business days after delivering the proposal, the audit committee does not give notice in writing to the board rejecting the proposal.
Removal of the auditor	<ul style="list-style-type: none"> • If the board removes the auditor from office, the auditor may require the company to include a statement in the director's report setting out the auditor's contention as to the circumstances that resulted in the removal. To exercise this power, the auditor must give written notice to the company by not later than the end of the financial year in which the removal took place and that notice must include the statement referred to above.
Vacancies in the office of auditor	<ul style="list-style-type: none"> • A vacancy in the office of auditor must be filled by the board within 40 business days.
Rotation requirements	<ul style="list-style-type: none"> • The same individual may not serve as the auditor for more than five consecutive financial years. Schedule 5 clarifies that the five consecutive financial years contemplated must be calculated from the date of commencement of the Act. • If an individual has served as the auditor for two or more consecutive financial years and then ceases to be the auditor, the individual may not be appointed again as the auditor of that company until after the expiry of at least two further financial years. • If a company has appointed two or more persons as joint auditors, the company must manage the rotation required by Section 92 of the Act in such a manner that all of the joint auditors do not relinquish office in the same year.

¹² See Sections 84, 90, 91, 92, 93 read with the transitional arrangements in Schedule 5 of the Act

	Requirement of the Act and Regulations
Rights and restricted functions of the auditor	<ul style="list-style-type: none"> • The auditor has the right of access to the accounting records and all books and documents of the company and is entitled to require from the directors or prescribed officers of the company any information and explanations necessary for the performance of his/her duties. • In the case of the auditor of a holding company, he/she has the right of access to all current and former financial statements of any subsidiary of that holding company and is entitled to require from the directors or officers of the holding company or subsidiary any information and explanations in connection with any such statements and in connection with the accounting records, books and documents of the subsidiary as necessary for the performance of the auditor's duties. • The obligations imposed on the auditor in terms of Section 300 of the old Act have not been retained. For example, there is no requirement for the auditor to satisfy himself that minute books and attendance registers in respect of meetings of the company and of directors and managers have been kept in the proper form. • The auditor is entitled to attend any general shareholders' meeting, receive all notices of and other communications relating to any general shareholders' meeting and be heard at any general shareholders' meeting on any part of the business of the meeting that concerns the auditor's duties or functions. • The requirement for the auditor to attend the annual general meeting of certain categories of companies, as introduced by the Corporate Laws Amendment Act, 2006, has been removed.
Transitional arrangements	<ul style="list-style-type: none"> • A person holding office as an auditor of a pre-existing company immediately before the effective date continues to hold that office as from the effective date, subject to the company's memorandum of incorporation and the requirements of the Act. • A person contemplated above who in terms of the Act is ineligible to be, or disqualified from being the auditor, is regarded as having resigned from every such office in any company as from the effective date. • A vacancy in the office of auditor of a pre-existing company as from the effective date, irrespective of how such vacancy arises, is to be filled in accordance with the requirements of the Act.



Audit committees: Appointment, membership and qualifications¹³

An independent audit committee plays a key role in identifying and managing financial risks. Section 94 of the Act regulates the different aspects of audit committees and applies concurrently with Section 64 of the Banks Act, dealing with audit committees of banks, as prescribed.

The table below provides a comparison of key requirements for an audit committee in terms of the old and the new Act.

Key requirements for an audit committee		
	Companies Act, 2008 (New Act)	Companies Act, 1973 (Old Act)
Election/appointment of the audit committee	<ul style="list-style-type: none"> An audit committee must be elected at each annual general meeting. 	<ul style="list-style-type: none"> In every financial year in which a company is a widely held company, its board of directors must appoint an audit committee for the following financial year.
Categories of companies that are required to have an audit committee	<ul style="list-style-type: none"> Public companies, state-owned companies and any other company that is required by its memorandum of incorporation to have an audit committee. 	<ul style="list-style-type: none"> Widely held companies.
Exemption from appointing an audit committee	<ul style="list-style-type: none"> Similar to the Companies Act, 1973. The exemption applies to subsidiaries where the holding company has an audit committee that will perform the prescribed functions on behalf of the subsidiary. 	<ul style="list-style-type: none"> Widely held companies are exempted from appointing an audit committee if the audit committee of the holding company will perform the functions on behalf of that company.
Vacancies on the committee	<ul style="list-style-type: none"> The board of a company must appoint a person to fill any vacancy on the audit committee within 40 business days after the vacancy arises. 	<ul style="list-style-type: none"> No specific provision.
Number of members	<ul style="list-style-type: none"> At least three members are required. 	<ul style="list-style-type: none"> At least two members are required.
Membership	<ul style="list-style-type: none"> Each member of the audit committee must be a director of the company. Each member must not be: <ul style="list-style-type: none"> Involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year; A prescribed officer, or full-time 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 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 director is compromised by that relationship; and Related to any person who falls within any of the criteria set out in the sub-paragraphs above. <p>The terms 'related and inter-related' are defined in Section 2 of the Act.</p> <p>Note that the Act does not use the terms "executive", "non-executive" or "independent non-executive" directors but rather defines the membership criteria.</p>	<ul style="list-style-type: none"> The audit committee must consist only of non-executive directors of the company who must act independently. A director is a non-executive director of a company if the director: <ul style="list-style-type: none"> Is not involved in the day-to-day management of the business and has not in the past three financial years been a full-time salaried employee of the company or its group; Is not a member of the immediate family of an individual mentioned above. <p>A director acts independently if that director:</p> <ul style="list-style-type: none"> Expresses opinions, exercises judgment and makes decisions impartially; and Is not related to the company or to any shareholder, supplier, customer or other director of the company in a way that would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that director is compromised by that relationship.
Qualification of members	<p>The Regulations prescribe that at least one-third of the members of a company's audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.</p>	<p>No provision for the prescription of qualifications by the minister.</p>

¹³ See Section 94 of the Act read with Regulation 42

Functions of the audit committee¹⁴

Neither the appointment nor the duties of an audit committee reduce the functions and duties of the board or the directors of the company, except with respect to the appointment, fees and terms of engagement of the auditor.

A company must pay all expenses reasonably incurred by its audit committee, including the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

Functions relating to the terms of engagement of the auditor

The audit committee is required to:

- Nominate for appointment as auditor of the company a registered auditor who, in the opinion of the audit committee, is independent of the company;
 - Determine the fees to be paid to the auditor and the auditor's terms of engagement; and
 - Ensure that the appointment of the auditor complies with the Act and any other legislation relating to the appointment of auditors.
-

Functions relating to non-audit services performed by the auditor

The audit committee is required to:

- Determine the nature and extent of any non-audit services that the auditor may provide to the company, or that the auditor must not provide to the company, or a related company; and
 - Pre-approve any proposed agreement with the auditor for the provision of non-audit services to the company.
-

General functions

The audit committee is required to:

- Receive and deal appropriately with any concerns or complaints, whether from within or outside the company, or on its own initiative relating to:
 - The accounting practices and internal audit of the company;
 - The content or auditing of the company's financial statements;
 - The internal financial controls of the company; or
 - Any related matter;
 - To make submissions to the board on any matter concerning the company's accounting policies, financial control, records and reporting; and
 - To perform such other oversight functions as may be determined by the board.
-

Reporting in the annual financial statements

The audit committee is required to prepare a report to be included in the annual financial statements for that financial year:

- Describing how the audit committee carried out its functions;
- Stating whether the audit committee is satisfied that the auditor was independent of the company; and
- Commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company.

It is possible that including such report in the annual financial statements may create a conflict of interest for the auditor, who would have to express an opinion on a statement regarding his own independence. This may result in a conflict with the Auditing Profession Act, 2005 (APA). In terms of Section 5 of the Act, in the event of conflict between the APA and the Act, the APA takes precedence. As a result, it should be considered that the report of the audit committee be presented outside the audited annual financial statements.

¹⁴ See Section 94 of the Act

Auditor independence

One of the key functions of the audit committee is to ensure that the registered auditor is independent of the company. In considering whether a registered auditor is independent, the audit committee of that company must verify that the auditor does not receive any direct or indirect remuneration or other benefit from the company, except as auditor or for rendering other services to the company, to the extent permitted by the audit committee.

The committee must also consider whether the auditor's independence may have been prejudiced as a result of any previous appointment as auditor or having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the company.

Finally, the committee must consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors, established by the Auditing Profession Act, 2005, in relation to the company and, if the company is a member of a group of companies, any other company within that group.

Nothing precludes the appointment of an auditor by a company at its annual general meeting other than one nominated by the audit committee. However, if such an auditor is appointed, the appointment is valid only if the audit committee is satisfied that the proposed auditor is independent of the company.

Resolution of disputes and clarification of doubts¹⁵

If, as a consequence of the coming into effect of the new Act and the repeal of the old Act, a conflict, dispute or doubt arises within two years after the effective date concerning the particular manner or form in which, or time by which, a pre-existing company is required to–

- prepare its annual financial statements, convene an annual general meeting, provide copies of its annual financial statements to its shareholders and any notice or any other document;
- file any particular document with the Commission; or
- take any other particular action required in terms of the new Act or the company's memorandum of incorporation,

the company may apply to the Tribunal for directions and a member of the Tribunal may make an administrative order that is appropriate and reasonable in the circumstances.

¹⁵ See the transitional arrangements in Schedule 5 of the Act





Appendix A – Required disclosure in the financial statements

Act reference	Required disclosure
Disclosure by all companies	
Section 29(1)(c), (d) and (e)	<p>The following disclosures are required in any financial statements, provided to any person for any reason (including the annual financial statements):</p> <ul style="list-style-type: none"> • The company’s assets, liabilities and equity, as well as its income and expenses, and any other prescribed information; • The date on which the statements were produced; • The accounting period to which the statements apply; and • A prominent notice on the first page of the statements indicating that: <ul style="list-style-type: none"> – The statements have been audited in compliance with any applicable requirements of the Act (where applicable); or – The statements have been independently reviewed in compliance with any applicable requirements of the Act (where appropriate); or – The statements have not been audited or independently reviewed; and – The name and professional designation, if any, of the individual who prepared or supervised the preparation of those statements.
Section 30(3)	<p>The following should be included in the annual financial statements:</p> <ul style="list-style-type: none"> • The auditor’s report, if the statements are audited; • The directors’ report of the company, or of the group, if the company is part of a group, with respect to: <ul style="list-style-type: none"> – The state of affairs; – The business; – The profit or loss; – Any matter material for the shareholders to appreciate the company’s state of affairs; and – Any prescribed information.
Section 94(7)(f)	<p>The following disclosures in the audit committee report (where applicable) are required in the annual financial statements:</p> <ul style="list-style-type: none"> • Describing how the audit committee carried out its functions; • Stating whether the audit committee is satisfied that the auditor was independent of the company; and • Commenting in any way that the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company.
Section 97(1)	<p>Disclosure of qualifying employee share scheme (where applicable) in the annual financial statements:</p> <ul style="list-style-type: none"> • An employee share scheme qualifies for exemption from the requirements of Section 41(2)(d), 44(3)(a)(i) and 45(3)(a)(i) if, in addition to other requirements, it states in its annual financial statements the number of specified shares that it has allotted during the financial year in terms of its employee share scheme.
Section 88(2)(e), 89(2)	<p>Disclosure relating to the company secretary (where applicable) in the annual financial statements:</p> <ul style="list-style-type: none"> • Certifying whether the company has filed required returns and notices in terms of the Act; • Stating whether all the filed required returns and notices appear to be true, correct and up to date; and • Including a statement in the directors’ report setting out the company secretary’s contention as to the circumstances that resulted in the removal of the company secretary, where the company secretary so requires.

Act reference	Required disclosure
Disclosure by all companies	
Section 91(6)	<p>Disclosure relating to the auditor (where applicable) in the annual financial statements:</p> <ul style="list-style-type: none"> • Including a statement in the directors' report setting out the auditor's contention as to the circumstances that resulted in the removal of the auditor, where the auditor so requires.
Additional disclosure of directors' emoluments by companies required in terms of the Act (and the Regulations) to have their annual financial statements audited	
Section 30(4)-(6)	<p>Directors' emoluments:</p> <ul style="list-style-type: none"> • Disclosure of remuneration and benefits received by each director, or individual holding any prescribed office. Remuneration includes: <ul style="list-style-type: none"> – Fees paid for services rendered by them to or on behalf of the company, including amounts paid in respect of the person's accepting of office of director; – Salary, bonuses and performance-related payments; – Expense allowances, to the extent that the director is not required to account for the allowance; – Contributions paid under any pension scheme not otherwise required to be disclosed in terms of the point marked * below; – Value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them as contemplated in Section 42 of the Act; – Financial assistance to a director, past director or future director, or person related to any of them, for the subscription of options or securities or the purchase of securities as contemplated in Section 44 of the Act; – With respect to any loan or other financial assistance by the company to a director, past director or future director, or a person related to any of them, or any loan made by a third party to any such person, as contemplated in Section 45 of the Act, if the company is guarantor of the loan, the value of: <ul style="list-style-type: none"> - Any interest deferred, waived or forgiven; or; - The difference in value between; <ul style="list-style-type: none"> - The interest that would reasonably be charged in comparable circumstances at fair value rates in an arm's length transaction; and - The interest actually charged to the borrower if less. • *The amount of: <ul style="list-style-type: none"> – Any pensions paid by the company or receivable by current or past directors or individuals who hold or have held any prescribed office in the company; – Any amount paid or payable by the company to a pension scheme with respect to current or past directors or individuals who hold or have held any prescribed office in the company; • The amount of compensation paid in respect of loss of office to current or past directors or individuals who hold or have held any prescribed office in the company; • The number and class of any securities issued to a director or person holding any prescribed office in the company, or to any person related to any of them, and the consideration received by the company for those securities; and • Details of service contracts of current directors and individuals who hold any prescribed office in the company. • Directors' emoluments must show the amount of any remuneration or benefits paid to or receivable by persons in respect of: <ul style="list-style-type: none"> – Services rendered as directors or prescribed officers of the company; or – Services rendered while being directors or prescribed officers of the company: <ul style="list-style-type: none"> - As directors or prescribed officers of any other company within the same group of companies; or - Otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.



Appendix B – Interim financial statements and summarised information:

Comparison between the Companies Act 2008, the King Report on Governance 2009 (King III) and the JSE Limited Listings Requirements

	Companies Act, 2008	King III	JSE Listings Requirements
Interim financial statements			
Requirement that interim financial statements be prepared	<p>'Financial statements' as defined in Section 1 of the Companies Act, 2008 includes interim reports.</p> <p>However, the Act does not mandate the preparation of interim reports.</p>	<p>The board should periodically review the needs of users of financial information of the company and, based on that review, determine whether interim information should be provided every six months or more frequently, for example quarterly. [Chapter 3.37]</p>	<p>Interim reports shall be published and distributed to shareholders after the expiration of the first six month period of a financial year, by no later than three months after that date. In the instance where the financial year end has been changed resulting in the financial period being longer than twelve months, interim reports shall be published and distributed in respect of both—</p> <p>(a) the six-month period commencing on the first day of the financial period; and</p> <p>(b) a 12-month period commencing on the first day of such financial period, which second interim report must also comply with Section 3: Paragraph 3.18(c) (by no later than three months after the expiration of the first six months and the second twelve months respectively). [Section 3: Paragraph 3.15]</p>
Financial reporting standards that should be applied	<p>As interim reports are included in the definition of financial statements, such financial statements (if provided to any person for any reason), should satisfy the Financial Reporting Standard as to form and content, if such standards are prescribed. [S29(1)(a)]</p> <p>A company should thus comply with its Financial Reporting Standards as prescribed in the regulations if it prepares interim financial statements.</p>	<p>Not addressed in King III.</p>	<p>IAS 34 and the AC 500 standards as issued by the Accounting Practices Board. A statement that the financial statements have been so prepared must be included in the report. A statement must be included confirming that the accounting policies are in line with IFRS and are consistent with those of the previous annual financial statements (or include details of the changes). [Section 8: Paragraph 8.57]</p> <p>The additional disclosures of Section 8: Paragraph 8.58 to 8.61 should also be provided. [Section 8: Paragraph 8.57 to 8.61]</p>

	Companies Act, 2008	King III	JSE Listings Requirements
Requirement that interim financial statements should be reviewed or audited	The Companies Act does not require interim financial statements to be audited or reviewed.	<p>The audit committee should consider whether the external auditor should perform assurance procedures on interim results and should make a recommendation to the board in this regard. Considerations could include modifying the audit report on the last set of annual financial statements or identifying issues regarding the previously issued interim results. [Chapter 3.38]</p> <p>Where the external auditor is engaged to perform a review of the interim results, the audit committee should review the results of such engagement. [Chapter 3.39]</p> <p>Where the external auditor is appointed to perform a publicly reported review of the interim results, the report of the external auditor should be made available to users of the interim results and should be summarised in the interim results. [Chapter 3.40]</p>	<p>The JSE Listings Requirements do not require an audit of the interim financial statements. Unaudited interim reports shall be reviewed by an issuer’s auditor if the issuer’s auditors disclaimed, qualified or gave an adverse opinion in the issuer’s last annual financial statements, unless the JSE otherwise decides. [Section 3: Paragraph 3.18(b)]</p> <p>Where the financial period covers more than 12 months and interim reports are distributed in accordance with Paragraph 3.15, a review opinion must be obtained for the second interim period, which is a twelve-month period. [Section 3: Paragraph 3.18(h)]</p> <p>Other than the instances listed above, interim financial statements are not required to be reviewed.</p>
Distribution of interim financial statements	Distribution of interim financial statements is not addressed.	Distribution of interim financial statements is not addressed.	One hundred copies of the interim financial statements should be sent to the JSE. Interim financial statements should be distributed to each shareholder, published in the press and published on SENS. [Appendix to Section 11]

	Companies Act, 2008	King III	JSE Listings Requirements
Summarised information			
Requirement that summarised information be prepared	<p>The Companies Act addresses summarised financial statements (i.e. not a summarised <i>integrated</i> report as is done in King III).</p> <p>The Act does not mandate the preparation of summarised financial statements, but if a summary of any particular financial statement is provided to any person:</p> <ul style="list-style-type: none"> • Any such summary must comply with any prescribed requirements; and • The first page of the summary must bear a clear prominent notice: <ul style="list-style-type: none"> – Stating that it is a summary of particular financial statements prepared by the company, and setting out the date of those statements; – Stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited; and – Stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises; and • Setting out the steps required to obtain a copy of the financial statements that it summarises. [Section 29(3)] 	<p>Due to the volume and complexity of information conveyed in the integrated report, users benefit from a summary of the integrated report.</p> <p>The company should therefore prepare a summarised integrated report in addition to the complete integrated report. [Chapter 3.41]</p>	<p>An issuer's annual financial statements must be sent to the issuer's holders of securities and an electronic copy thereof must be submitted to the JSE on the JSE website once it is issued or 100 hard copies must be sent to the JSE. The electronic copy thereof will be deemed to have been received by the JSE at the time it was uploaded onto the JSE website.</p> <p>At the same time, an abridged version of such annual financial statements ('abridged report'), complying with Paragraphs 8.57 to 8.61 must be published on SENS.</p> <p>Although the audit report of the auditor need not be included in the abridged report, the name of the auditor must be included and if such report is modified, details of the nature of such modification must also be stated therein. If the audit report is not modified then a statement to this effect must be included in the report. [Section 3: Paragraph 3.21]</p> <p>Any annual financial information published voluntarily by an issuer in advance of being required to do so in terms of Paragraphs 3.20 or 3.21 must, at a minimum, be reviewed by the issuer's auditor (who must also comply with Paragraph 3.18(g) as it relates to its opinion on the preliminary report) and must comply with Paragraphs 8.57 to 8.61 in respect of disclosure ('preliminary report'). In this event, the name of the auditor must be stated in the preliminary report.</p> <p>Although the review/audit report of the auditor need not be included in the preliminary report, the preliminary report must state the type of review/audit conclusion – unqualified, qualified, disclaimer or adverse – and should contain an extract of the exact modification paragraph from the auditor's report.</p>

	Companies Act, 2008	King III	JSE Listings Requirements
			<p>The published preliminary report must also mention and contain details of any emphasis of matter paragraph or paragraphs regarding reportable irregularities, as defined in the Auditing Profession Act contained in the auditor's report. If the review/audit report of the auditor is not included in the preliminary report, it must state that the report of the auditor is available for inspection at the issuer's registered office.</p> <p>If an issuer has published a preliminary report, then, at the date of issue of its annual financial statements, such issuer must either comply with Paragraph 3.21, or publish an announcement stating that it has issued its annual financial statements and that it is not publishing an abridged report as the information previously published in the preliminary report is unchanged. [Section 3: Paragraph 3.22]</p>
Financial reporting standards that should be applied	<p>To the extent that the prescribed financial reporting standards contained in Regulation 27, provides guidance for summarised financial information, companies should apply this guidance in the preparation of their summarised financial statements. [Section 29(3)(a)]</p> <p>Currently, neither IFRS, SA GAAP nor IFRS for SMEs contain guidance for the preparation of summarised financial statements.</p>	<p>The objective of the summarised integrated report is to give a concise but balanced view of the company's integrated information. In preparing the summarised integrated report, companies should give due consideration to:</p> <ul style="list-style-type: none"> • Providing key financial information. IAS 34 provides useful guidance as to which financial information and notes should be included; • Providing sufficient commentary by the company to ensure an unbiased, succinct overview of the company's financial information; and • Providing the company's key performance measures regarding sustainability information. [Chapter 3.42] 	<p>Minimum contents of interim reports, preliminary reports, provisional annual financial statements ('provisional reports') and abridged annual financial statements ('abridged reports')</p> <p>Every listed company, in addition to complying with the statutory requirements concerning interim reports, preliminary reports, provisional reports and abridged reports must prepare and present such financial information as follows:</p> <ul style="list-style-type: none"> • Interim reports must be prepared in accordance with and containing the information required by <i>IAS 34: Interim Financial Reporting</i>, as well as the <i>AC 500</i> standards as issued by the Accounting Practices Board or its successor, and a statement confirming that it has been so prepared must be included in the report; • Preliminary reports, provisional reports and abridged reports must be prepared as follows and a statement confirming that they have been so prepared must be included in the report: <ul style="list-style-type: none"> – In accordance with the framework concepts and the measurement and recognition requirements of IFRS and the <i>AC 500</i> standards as issued by the Accounting Practices Board or its successor, and must also as a minimum, contain the information required by <i>IAS 34: Interim Financial Reporting</i>; or – In accordance with and containing the information required by IFRS and the <i>AC 500</i> standards, as issued by the Accounting Practices Board or its successor; and • A statement must be included confirming that the accounting policies are in line with IFRS and are consistent with those of the previous annual financial statements (or include details of any changes). [Section 8: Paragraph 8.57]

Companies Act, 2008	King III	JSE Listings Requirements
		<p>Supplementary information</p> <p>In addition to the requirements of IFRS and the AC 500 standards as issued by the Accounting Practices Board or its successor on Interim Financial Reporting and Schedule 4 of the Act, the following supplementary information must, where applicable and material, be included:</p> <ul style="list-style-type: none"> • In respect of the period under review and the immediately preceding comparable period, a headline earnings per share and a diluted headline earnings per share figure must be disclosed, in addition to the required IFRS earnings per share figures, together with an itemised reconciliation between headline earnings and the earnings used in the calculation of earnings per share; • With respect to mineral companies, summary information must be provided in the interim report disclosing any material changes to the information disclosed in compliance with 8.63(m) for the prior year/period ended, or an appropriate negative statement where there have been no material changes; and • Disclosure where there is a material change to the initial estimates of a contingent consideration payable or receivable in terms of an acquisition or disposal, as used in the pro forma financial effects calculations. [Section 8: Paragraph 8.58] <p>Change of financial year</p> <p>If a change in the financial year is proposed, the JSE must be notified in writing by the applicant issuer and consulted as to the period or periods to be covered by the interim report. [Section 8: Paragraph 8.59]</p>

	Companies Act, 2008	King III	JSE Listings Requirements
			<p>Audited/reviewed interim, provisional and abridged annual reports</p> <p>If an interim, preliminary, provisional or abridged report has been audited or reviewed by an auditor, this fact and the name of the auditor must be stated in such published report. Although the report of the auditor need not be included in the published report, if such report is modified, details of the nature of such modification must be stated therein. If the report of the auditor is not included in the published report, it must state that the report of the auditor is available for inspection at the company's registered office. If such report has not been audited or reviewed by an auditor, an appropriate negative statement must appear in such published report.</p> <p>[Section 8: Paragraph 8.60]</p> <p>Basis of presentation</p> <p>Interim, preliminary, provisional and abridged reports must be presented on a consolidated basis and prepared in accordance with Paragraphs 8.57 and 8.58.</p> <p>[Section 8: Paragraph 8.61]</p>
Requirement that summary financial statements be reviewed or audited	The Act does not require that summary financial statements be audited or reviewed.	The audit committee should engage the external auditors to provide an assurance report on summarised financial information, confirming that the summarised financial information is appropriately derived from the annual financial statements.	<p>Abridged reports (if prepared) should be audited.</p> <p>Although the audit report of the auditor need not be included in the abridged report, the name of the auditor must be included and if such report is modified, details of the nature of such modification must also be stated therein. If the audit report is not modified, then a statement to this effect must be included in the report.</p> <p>[Section 8: Paragraph 3.21]</p>
Method of distribution of the summary information	The Act does not prescribe the method of distribution of summary information.	Both the complete and the summarised integrated reports should be made available to stakeholders electronically and should be placed on the company's website. The board should, however, consider the nature of its stakeholder base in determining the appropriate method of disseminating the summarised integrated report. Where a large proportion of stakeholders does not have electronic access to the company's information, hard copies of the summarised integrated report should be made available to all the stakeholders on written request to the company's secretary or directed to the company's registered office.	<p>Where an abridged report is prepared:</p> <ul style="list-style-type: none"> At the same time an abridged version of such annual financial statements ('abridged report'), complying with Paragraphs 8.57 to 8.61 must be published on SENS. Three copies of the report should be sent to the JSE. The abridged report is not required to be distributed to shareholders and is not required to be published in the press.



How PwC can help you

PwC has significant experience in assisting clients with the changing terrain of regulatory compliance. We take a structured approach to enable clients to achieve and sustain compliance in an efficient and cost-effective manner.

Our solutions help companies to assess the impact of the new Companies Act and other legislation on their business as well as designing and implementing the changes required to ensure ongoing compliance.

Our understanding of the specific requirements of the Companies Act, together with our blend of regulatory compliance, auditing, tax, risk management, information technology, process consulting and industry-specific expertise, allows us to provide an end-to-end compliance solution.

Issues requiring prompt attention, with which we can assist you, include:

- Statutory audits and independent reviews including specific management reports on all significant internal control weaknesses identified;
- Voluntary audits and independent reviews, tailored to the specific needs and focus areas of the directors;
- Discussions with the company auditor and assistance with the calculation of the public interest score;
- Performing a gap analysis on the requirements of audit and board committees to ensure compliance with the requirements of the Act;
- Ensuring that directors, company secretaries and auditors comply with the eligibility requirements and are not disqualified;
- Performing a regulatory compliance risk assessment;
- Compiling a Companies Act risk management and monitoring plan;
- Aligning and redesigning the accounting records of a company to comply with the new requirements of the Act;
- Assisting with the development of record retention policies and procedures in compliance with the requirements of the Act;
- Maintenance of accounting records for a company and compiling of financial statements in compliance with the applicable accounting framework, where permitted;
- Incorporation of new companies tailored in terms of the alterable provisions of the Act;
- Aligning and redrafting memorandums of incorporation;
- Reviewing existing shareholders' agreements for any conflicting clauses with the Act or memorandum of incorporation, including obtaining legal input where required;
- Setting up records of directors, notices, minutes and a securities register that complies with the standards for company records in the Act;
- Maintenance of all secretarial records and lodging all forms, where permitted; and
- Training for affected persons in the company, such as directors.

This list is not exhaustive and has been provided to assist you to identify critical issues that should be dealt with promptly to minimise the risk of potential non-compliance with the Act.



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