

Companies Act Regulations applicable to companies

The Department of Trade and Industry published the final Regulations on the Companies Act on 20 April 2011 with an effective date of 1 May 2011.

This document includes an overview of the new arrangements that will apply to the audit requirement, independent review and the financial reporting standards. For all year-ends up to and including 30 April 2011 companies must comply with the existing requirements of the 1973 Companies Act, viz. audited financial statements drawn up based on SA GAAP.

Public interest score

The Regulations state that every company must calculate its 'public interest score' (PIS) for each financial year at the end of the year.

In terms of this requirement every company must calculate its PIS for 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 liabilities 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.

"Employee" is as defined in the Labour Relations Act, 1995.

"Turnover" is not defined in the context of the PIS, but is defined elsewhere as the gross income derived from the sale of goods, the rendering of services or the use by other persons of the company's assets yielding interest, royalties, or dividends.

The company's PIS will be used to determine whether or not it will require audited financial statements, which financial reporting standards apply, and who may conduct an independent review for those companies that are not subject to the audit requirement.

Audit exemption

The Amendment Act provides for an exemption with regards to audit and independent review. The exemption states the following:

"30 (2A) 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 this section to have its annual financial statements audited or independently reviewed, but this exemption—

- (a) does not apply to the company if it falls into a class of company that is required to have its annual financial statement audited in terms of the regulations contemplated in subsection (7)(a); and
- (b) 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."

This would imply that all companies that meet the requirement to be audited in terms of the PIS or activity test would require an audit. Should the company not require an audit in terms of the Regulations and all holders of beneficial interests are also directors of the company, then the requirement for an independent review is also not applicable.

Audit requirement

The Regulations provide for both activity and size criteria to determine whether or not companies require audited financial statements.

The requirements now require the following companies to have their financial statements audited:

- public companies
- state owned companies,
- any company that falls within any of the following categories in any particular financial year:
 - (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 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 is
 - (i) 350 or more; or
 - (ii) at least 100, but less than 350, if its annual financial statements for that year were internally compiled.

It is important to note that the activity test relates to the primary activities of the company, not incidental/resulting activities, and specifically states “in a fiduciary capacity”. By way of example, assume a company operates as an estate agency – the holding of funds in trust is incidental to the primary business and not in a fiduciary capacity. The Companies Act would thus not require an audit on this basis, but laws applicable to Estate Agents might well require an audit.

The inclusion of size criteria will inevitably mean that a large number of private companies will be required to have their financial statements audited. All companies with a PIS of more than 350 will be audited. For those companies with a score below 350, an audit will nonetheless be required if the company meets the requirements of the activity test or has its financial statements internally compiled and has a PIS of at least 100.

Independent review

The Regulations states that 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 (SAICA is the only body so accredited); 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 of the Close Corporations Act, 1984.

The effect of this Regulation is that only registered auditors and CAs(SA) may do an independent review of companies with a public interest score of more than 100.

An independent review may also not be carried out by an independent accounting professional (IAP) who was involved in the preparation of the financial statements. This prohibition is interpreted to apply only to the individual concerned and not the firm. Where one partner prepares the financial statements and another performs the review, the firm will need to consider whether there is an impairment of independence before accepting the appointment as IAP.

Trusts as members of companies

The CIPC holds the view that if a company/CC is held by another company or a trust, then the exemption stated in section 30(2A) would not apply as the company or trust cannot be a director of the company as it is not a natural person. A trust is specifically included in the definition of “juristic person”.

The exemption in section 30(2A) states 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 this section to have its annual financial statements audited or independently reviewed, but this exemption does not apply if the company is required to be audited in terms of the Regulations or in terms on any other legal requirement.

SAICA’s view is that in certain circumstances trust ownership could still lead to a company being owner managed. Similarly we believe this principle should apply to owner managed groups of companies.

We recommend, however, that until the CIPC or the courts decide otherwise, members should follow the CIPC's interpretation.

Financial reporting Standards

The Regulations make provision for IFRS, IFRS for SMEs and SA GAAP and also state that the Financial Reporting Standard apply to every company with a financial year end starting on or after the effective date of the Act. Therefore companies with a year end after 30 April 2012 will have to prepare financial statements in line with this table:

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 SMEs.
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 SMEs.
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 SMEs; or (c) SA GAAP.
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.

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 SMEs.
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	One of— (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for

(b) whose public interest score for the particular financial year is at less than 100, and whose financial statements are independently compiled.	SMEs; 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.

Theoretically companies would not have to apply IFRS / IFRS for SMEs / SA GAAP in the financial statements for year ends from 31 May 2011 to 31 March 2012. For practical reasons and to avoid unnecessary complications in the audit or review process, it is recommended that the appropriate Financial Reporting Standards are applied per the above tables for all years ending on or after 1 May 2011.

Companies should also note that SA GAAP for SMEs (as opposed to IFRS for SMEs) can still be applied as follows:

- (a) in financial statements for year ends up to and including 31 March 2012 by all companies eligible to use the standard; and
- (b) in financial statements for year ends ending on 30 April 2012 by companies not requiring an audit.