ILLUSTRATIVE REPORTABLE IRREGULARITY LETTERS FOR INDEPENDENT REVIEWS

Introduction

.01 In terms of Regulation 29(6) of the Companies Act No. 71, 2008 (“Companies Act”), “an independent reviewer of a company that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that company must, without delay, send a written report to the [Companies and Intellectual Property] Commission [ (“the Commission”)]. The report must give particulars of the reportable irregularity and must include such other information and particulars as the independent reviewer considers appropriate.”

.02 Regulation 29(7) of the Companies Act requires an independent reviewer to notify the members of the board of the company, in writing, within three days of sending the report to the Commission. A copy of the report to the Commission must accompany the notice.

.03 Regulation 29(8) of the Companies Act states that the independent reviewer must, as soon as is reasonably possible but not later than 20 business days from the date on which the initial report in terms of Regulation 29(6) was sent to the Commission, send another report to the Commission, which must include a statement that no reportable irregularity has taken place or is taking place, or that the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof; and detailed particulars and information to support that statement.

.04 To assist members, the South African Institute of Chartered Accountants (SAICA) has provided in:  

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1 The report should be converted to a PDF format prior to being issued. The report should be adapted when a close corporation is the entity being reviewed. Where the same reportable irregularity is being reported for a group of companies, the letter can be adapted to deal with all companies in the group, by individually specifying the name and registration number of each company in the group.

Issued December 2011
Appendix A, an illustrative Reportable Irregularity letter to the Commission in accordance with Regulation 29(6) of the Companies Act, which is the initial report to the Commission;

Appendix B, an illustrative Reportable Irregularity letter to notify members of the board of the company in accordance with Regulation 29(7) of the Companies Act;

Appendix C, a subsequent letter to the Commission in accordance with Regulation 29(8) of the Companies Act.

Johannesburg                          M P Matlwa
December 2011                       Chief Executive Officer
APPENDIX A

Template letter to the Commissioner

Initial Report: Reportable Irregularity for Independent Review Engagements

[Firm Letterhead]

[Date]

The Commissioner
Companies and Intellectual Property Commission
P O Box 429
Pretoria
0001

Dear Sir/Madam

INITIAL REPORT: REPORTABLE IRREGULARITY ARISING FROM AN INDEPENDENT REVIEW
NAME OF ENTITY: [INSERT THE NAME OF THE COMPANY]
REGISTRATION NUMBER: [INSERT THE COMPANY’S REGISTRATION NUMBER]

This letter is in accordance with the requirements of Regulation 29(6) of the Companies Act No. 71, 2008.

My firm has been engaged by [insert name of entity] to independently review the annual financial statements.

I have reason to believe that a reportable irregularity, as defined in the Act, has taken, or is taking place. I am not able to make a legal determination in respect of the suspected unlawful act or omission, but have exercised professional judgement, based on the evidence or information which has come to my knowledge, including undertaking further investigations of information as were considered necessary in the circumstances.

Particulars of the reportable irregularity are:
[Provide particulars, including any other information and particulars considered appropriate.]

As required by Regulation 29(7)(a), we will within three business days of sending this report to you notify the members of the board of the company in writing that we have sent this report to you. A copy of this report will accompany the notice.

Please acknowledge receipt of this report.

Yours faithfully

[Name of Independent Reviewer]
Chartered Accountant (SA)
APPENDIX B

Template letter to the members of the board of the company:
Reportable Irregularity

[Firm Letterhead]

[Date]

[Members of the board of the company]
[Name of entity being independently reviewed]
[Address]

Dear Members

REPORTABLE IRREGULARITY ARISING FROM AN INDEPENDENT REVIEW

This letter is in accordance with the requirements of Regulation 29(7) of the Companies Act No. 71, 2008.

Regulation 29(1) of the Companies Act defines a reportable irregularity as any act or omission committed by any person responsible for the management of an entity, which:

• 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.

I have reason to believe that a reportable irregularity has taken or is taking place and, as required by the Act, I have reported particulars of the irregularity to the Companies and Intellectual Properties Commission (“the Commission”) in a written report dated [insert date], a copy of which is attached.
As indicated in that report, I am not able to make a legal determination in respect of the suspected unlawful act or omission, but have exercised professional judgement, based on the evidence or information which has come to my knowledge, including undertaking further investigations of information as were considered necessary in the circumstances.

Regulation 29(8) of the Companies Act requires me as soon as is reasonably possible, but no later than 20 business days from the date on which the initial report was forwarded to the Commission, to:

• take all reasonable measures to discuss the attached report sent to the Commission with the members of the board of the company;
• afford the members of the board of the company an opportunity to make representations in respect of the report; and
• send another report to the Commission, which report must include:
  ○ a statement that the independent reviewer is of the opinion that
    ▪ no reportable irregularity has taken place or is taking place; or
    ▪ the suspected reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant; or
    ▪ the reportable irregularity is continuing; and
  ○ detailed particulars and information supporting the statement.

If we are to report to the Commission that the reportable irregularity is continuing, the Commission has a responsibility to notify any appropriate regulator in writing of the details of the reportable irregularity concerned and provide it with a copy of our final report. Furthermore, the Commission may investigate any alleged contravention of the Companies Act.

I invite you to discuss my report to the Commission, at a meeting to be arranged as soon as possible, and at that meeting I will afford you the opportunity to make representations in respect of my report. If the members of the board fail or decline to engage in discussions with us, the matter will proceed in conformity with the requirements of Regulation 29 of the Companies Act, 2008.
ILLUSTRATIVE REPORTABLE
IRREGULARITY LETTERS FOR
INDEPENDENT REVIEWS

Please acknowledge receipt of this report.

Yours faithfully

[Name of Independent Reviewer]
Chartered Accountant (SA)
Template letter to the Commissioner

Subsequent Report: Reportable Irregularity in Independent Review Engagements

[Firm Letterhead]

[Date]

The Commissioner
Companies and Intellectual Property Commission
P O Box 429
Pretoria
0001

Dear Sir/Madam

SUBSEQUENT REPORT: REPORTABLE IRREGULARITY ARISING FROM AN INDEPENDENT REVIEW
NAME OF ENTITY: [INSERT THE NAME OF THE COMPANY]
REGISTRATION NUMBER: [INSERT THE ENTITY’S REGISTRATION NUMBER]

This letter is in accordance with the requirements of Regulation 29(8) of the Companies Act No. 71, 2008.

I refer to my initial report dated [insert date of initial report]. I have included a copy of the written notice which was sent together with the abovementioned report to the members of the board of the company.

I have discussed that report with the members of the board of the company and have afforded them an opportunity to make representations in respect of the report. I have also undertaken such further investigations as I considered necessary. I have included written representations made by members of the board of the company of the entity in respect of the report. [Delete if not applicable.]

[OR]
Although I have taken all reasonable measures to communicate with the board of the company in respect of the suspected reportable irregularity, the board has failed or declined to engage in discussions with me. However, I have undertaken such further investigations as I considered necessary / I have also been unable to undertake such further investigations as I considered necessary. [Delete if not applicable.]

I report that in my opinion no reportable irregularity has taken place or is taking place / the reportable irregularity is no longer taking place and that adequate steps have been taken for the prevention or recovery of any loss as a result thereof, if relevant / the reportable irregularity is continuing. [Delete if not applicable.]

Details and information in support of my statement above are as follows: [Provide details and information.]

Please acknowledge receipt of this report.

Yours faithfully

[Name of Independent Reviewer]
Chartered Accountant (SA)