

## ILLUSTRATIVE REPORT RELATING TO A CERTIFICATE PREPARED BY A COMPANY FOR CONVEYANCING PURPOSES

### Introduction

- .01 This circular replaces Circular 13/2005 – *Reports relating to certificates prepared by a company for conveyancing purposes*. This circular provides an illustrative practitioner's report when requested by a client to perform an agreed-upon procedures engagement relating to a certificate for conveyancing purposes.
- .02 "Practitioner" refers to a chartered accountant (SA) (CA(SA)) who places professional services at the disposal of the public for reward; in this instance, accepting and performing an agreed-upon procedures engagement for a client entity. Depending on the practitioner's professional relationship with the particular client, the practitioner may be requested to perform the engagement in his/her capacity as the auditor (independent auditor) or independent reviewer or independent accounting professional or accounting officer of the client entity. This should form part of the practitioner's engagement acceptance considerations and agreeing the terms of engagement with the particular client.
- .03 For purposes of this illustration, it is assumed that the client entity is a company involved in a conveyancing transaction in terms of which the company has been requested by the conveyancer/attorney to prepare or complete, and sign a certificate for a loan to the company. The *Certificate for a loan to a company* must be completed and signed by a director of the company.
- .04 The practitioner considers the acceptance of, and performs an agreed-upon procedures engagement with respect to a *Certificate for a loan to a company* in accordance with International Standard on Related Services (ISRS) 4400, *Engagements to Perform Agreed-Upon Procedures Regarding Financial Information*. If accepted, the practitioner must ensure that the engagement is performed and reported on in accordance with the requirements of ISRS 4400. This circular does not change the practitioner's responsibility to comply with ISRS 4400. Furthermore, the practitioner should exercise professional judgement in applying the guidance presented in this circular to the particular circumstances of the engagement, including making appropriate adaptations as may be necessary in the context of the nature and content of the company certificate to which the engagement relates.
- .05 The company certificate included in **Part A** (below) and the practitioner's report of factual findings in **Part B** (below) are illustrative of these types of engagements and are not intended, and do not represent all the different types of certificates and engagement requests for conveyancing purposes.

Part A\...

**Part A**

**Illustrative certificate for a loan<sup>1</sup> to a company<sup>2</sup> signed by the directors<sup>3</sup> of the company (i.e. the subject matter of the agreed-upon procedures engagement)**

**Caution:** *The types of certificates that may be found in the market place are varied and may include the matters in this illustrative certificate or may include the relevant matters but they may be worded differently, or it may refer to additional items in its wording (for example, additional sections of the Companies Act), or it may omit some of the matters, or it may include additional matters. The practitioner does not have control over what the conveyancer/attorney and bank/s involved may require their client/s to certify. However, the practitioner must exercise caution in accepting any agreed-upon procedures engagement that has any particular certificate as its subject-matter – this would form part of the practitioner’s engagement acceptance considerations, agreeing the terms of the engagement and issuing an engagement letter in accordance with ISRS 4400. The practitioner should pay careful attention to the details of the particular certificate that has been signed by a director of the company, the particular wording of its various elements and must exercise due care and judgement in designing, agreeing on, performing the appropriate agreed-upon procedures and reporting his/her factual findings.*

[Conveyancer/Attorney’s name and address]

**Certificate for a loan<sup>4</sup> to the company**

LOAN OF R[amount].....

TO [Company name and registration number]

BY [Bank name]

AGAINST A BOND TO BE REGISTERED OVER

[Property description]

I/We, the undersigned, hereby certify that:

1. The company is still registered with the Companies and Intellectual Property Commission (CIPC) as a private/public company.
2. No resolution has been passed by the company altering or having the effect of altering the Memorandum of Incorporation since [insert date].
3. No resolution has been passed for the voluntary winding-up of the company, no application for winding-up by the court has been presented to the court and the company has not passed a resolution to begin business rescue proceedings.

<sup>1</sup> A particular conveyancing process may involve different elements of the overall transaction/s, requiring different types of certificates to be completed. This illustrative certificate deals with a *loan to a company*. Certificates may also be required in relation to, for example, a company/entity providing surety for a loan being granted to another company/entity, or with respect to the transfer of a property to the company/entity, or a transfer from the company/entity.

<sup>2</sup> Similar types of certificates may be required for conveyancing purposes for entities other than companies, including, for example, close corporations and trusts. In these instances the content of the certificate will be adapted to the characteristics and circumstances of those types of entities. The practitioner must be alert to these specific details and adapt his/her Report of factual findings accordingly.

<sup>3</sup> This reference will be different depending on the type of entity involved. For example “the members” in the case of a close corporation and “the trustees” in the case of a trust.

<sup>4</sup> A particular conveyancing process may involve different elements of the overall transaction/s, requiring different types of certificates to be completed. This illustrative certificate deals with a *loan to a company*. Certificates may also be required in relation to, for example, a company/entity providing surety for a loan being granted to another company/entity, or with respect to the transfer of a property to the company/entity, or a transfer from the company/entity.

4. On [*insert date*], the following is/are the director/s of the company and the appointment of this/these director/s has/have been recorded in the register of directors and has/have been confirmed by CIPC.

[*Directors' name/s*]

5. The company is not one in which 75% or more of the voting securities, voting power, power of control, capital, assets or earnings are directly or indirectly vested in or controlled by or on behalf of any person who is not resident in the Republic of South Africa (as contemplated in Regulation 3(1)(f)(ii) of the Exchange Control Regulations, 1961, as amended).
6. The above-mentioned transaction has been duly authorised by the company and (*if applicable*) the relevant resolution has been duly signed by the directors authorising that the transaction is not invalid in terms of sections 44, 45 or 75 of the Companies Act, 71 of 2008 (the Companies Act).

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Director]

Part B\...

**Part B**

**Illustrative practitioner’s report of factual findings**

**REPORT OF FACTUAL FINDINGS OF THE [INDEPENDENT AUDITOR / INDEPENDENT REVIEWER / INDEPENDENT ACCOUNTING PROFESSIONAL / ACCOUNTING PROFESSIONAL] TO THE DIRECTORS<sup>5</sup> OF [COMPANY NAME AND REGISTRATION NUMBER] IN CONNECTION WITH A CERTIFICATE FOR A LOAN<sup>6</sup> TO A COMPANY**

**Scope**

We have performed the procedures agreed with you and enumerated below with respect to the information contained in the attached certificate for a loan to [company name and registration number] dated [date of certificate], which we have initialled for identification purposes (the company certificate). Our engagement was undertaken in accordance with International Standard on Related Services (ISRS) 4400, *Engagements to perform Agreed-Upon Procedures Regarding Financial Information*. The responsibility for determining the adequacy or otherwise of the procedures agreed to be performed is that of the directors and the conveyancer/attorney to whom the certificate is addressed. Our procedures were performed to assist you and the conveyancer/attorney in evaluating the information contained in the company certificate for conveyancing purposes.

**Agreed Upon Procedures and Findings**

<b>Procedures</b>	<b>Findings</b> <i>(The findings should be tailored where necessary to reflect the specific circumstances, procedures performed, findings and exceptions noted.)</i>
1. We requested confirmation from the Companies and Intellectual Property Commission (CIPC) that the company is still registered.	We [received / did not receive] confirmation from CIPC that the company is still registered.
2. We inspected the minute book to determine whether any resolution has been passed by the company altering or having the effect of altering the Memorandum of Incorporation of the company since the date as indicated in the company certificate.	<p>We did not find any resolution in the minute book altering or having the effect of altering the Memorandum of Incorporation of the company since [insert the date as mentioned in the company certificate].</p> <p><u>[OR]</u></p> <p>We identified the following resolution/s in the minute book altering or having the effect of altering the Memorandum of Incorporation of the company since [insert the date as mentioned in the company certificate]:</p>

<sup>5</sup> Should be adapted to the circumstances, depending on the type of entity involved, for example “the members” in the case of a close corporation and “the trustees” in the case of a trust.

<sup>6</sup> A particular conveyancing process may involve different elements of the overall transaction/s, requiring different types of certificates to be completed. This illustrative certificate deals with a *loan to a company*. Certificates may also be required in relation to, for example, (not an exhaustive list) a company/entity providing surety for a loan being granted to another company/entity, or with respect to the transfer of a property to the company/entity, or a transfer from the company/entity.

Procedures	Findings <i>(The findings should be tailored where necessary to reflect the specific circumstances, procedures performed, findings and exceptions noted.)</i>
	<ul style="list-style-type: none"> <li>[List the resolution/s by indicating the date of each resolution and the matter being altered in the Memorandum of Incorporation].</li> </ul>
<p>3. We inspected the minute book to determine whether any resolution has been passed for the voluntary winding-up of the company or to apply for the winding-up of the company by a court or to begin business rescue proceedings.</p>	<p>We [identified a resolution / did not find any resolution] in the minute book for the voluntary winding-up of the company or to apply for winding-up of the company by a court or to begin business rescue proceedings.</p>
<p>4. We inspected the register of directors for the name/(s) and appointment date/(s) of the director/(s) of the company as included in the company certificate, and requested confirmation of this information from CIPC.</p>	<p>The name/(s) and appointment dates/(s) of the director/(s) as included in the company certificate [agree / do not agree] to the information in the register of directors and the confirmation received from CIPC.</p>
<p>5. We inspected the [securities register / members' register]<sup>7</sup> of the company to determine whether or not the company is one in which 75% or more of the voting securities, voting power, power of control, capital, assets or earnings are directly or indirectly vested in or controlled by or on behalf of any person who is not resident in the Republic of South Africa (as contemplated in Regulation 3(1)(f)(ii) of the Exchange Control Regulations, 1961, as amended).</p>	<p>We determined that the company [is / is not] one in which 75% or more of the voting securities, voting power, power of control, capital, assets or earnings are <i>directly</i> vested in any person who is not resident in the Republic of South Africa (as contemplated in Regulation 3(1)(f)(ii) of the Exchange Control Regulations, 1961, as amended).                      However, we are not able to determine whether the company is one in which 75% or more of the voting securities, voting power, power of control, capital, assets or earnings are <i>indirectly</i> vested in or controlled by or on behalf of any person who is not resident in the Republic of South Africa (as contemplated in Regulation 3(1)(f)(ii) of the Exchange Control Regulations, 1961, as amended).</p>
<p>6. We inspected the minute book to determine whether or not a resolution has been passed authorising the transaction that is the subject matter of the company certificate.</p>	<p>We [identified a resolution / did not find any resolution] in the minute book authorising the transaction that is the subject matter of the company certificate.</p>
<p>7. We inspected the minutes relating to the resolution referred to in procedure 6 above, to determine</p>	<p>The minutes relating to the resolution referred to in procedure 6 [address / do not address] responsibilities the directors may have in terms of</p>

<sup>7</sup> In the case of a profit company the appropriate record is a securities register, and in the case of a non-profit company it is a members' register.

Procedures	Findings <i>(The findings should be tailored where necessary to reflect the specific circumstances, procedures performed, findings and exceptions noted.)</i>
whether or not it addresses any responsibilities the directors may have in terms of sections 44, 45 or 75 of the Companies Act.	sections 44, 45 or 75 of the Companies Act.

Because the above procedures do not constitute either an audit or a review or other assurance engagement made in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, we do not express any assurance on the information provided in the company certificate. Had we performed an audit or review, or other assurance engagement on the abovementioned company certificate in accordance with International Standards on Auditing, International Standards on Review Engagements or International Standards on Assurance Engagements, other matters might have come to our attention that would have been reported to you.

**Restriction on use and distribution**

Our report is solely for the purpose set out in the first paragraph of this report and for your information and is not to be used for any other purpose or to be distributed to any other parties. This report relates only to the records and items specified above and does not extend to any financial statements of [insert name of the company], taken as a whole.

[Name of practitioner's firm / Name of practitioner]  
 Registered Auditors<sup>8</sup>  
 Chartered Accountants (SA)  
 Date  
 Address

**Johannesburg  
 June 2016**

**Mr W Botha  
 Senior Executive: Assurance and Practice**

<sup>8</sup> The designation "Registered Auditor(s)" will only be included in those instances where the firm or practitioner performs this agreed-upon procedures engagement in their/his/her capacity as the independent auditor of the company.