

## **ILLUSTRATIVE REPORTABLE IRREGULARITY LETTERS FOR INDEPENDENT REVIEWS**

### **Caution**

Members are requested /encouraged to seek legal advice with regard to the implication of the Protection of Personal Information Act (POPI Act), pertaining to the engagement, as well as any other legislation that may be applicable.

### **Introduction**

- .01 In terms of Regulation 29(6) of the Companies Regulations, 2011 (the “Regulations”), 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 Regulations requires an independent reviewer to notify the members of the board of the company, in writing, within three business 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 Regulations 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:
- take all reasonable measures to discuss that initial report 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 that initial report; and
  - send another report (i.e. a second 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, if relevant, or that the reportable irregularity is continuing.
- This second report is required to include detailed particulars and information supporting the statement referred to above.
- .04 To assist members, the South African Institute of Chartered Accountants (SAICA) has provided in: <sup>1</sup>
- Appendix A, an illustrative reportable irregularity letter to the Commission in accordance with Regulation 29(6) of the Regulations, which is the initial report to the Commission (i.e. the first 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 Regulations; and
- Appendix C, a subsequent letter to the Commission in accordance with Regulation 29(8)(c) of the Regulations (i.e. the second report to the Commission).

**Johannesburg  
July 2016**

**Willie Botha  
Senior Executive: Assurance and Practice**

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<sup>1</sup>The report should be converted to a PDF format prior to being issued.  
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.

## APPENDIX A

### Template letter to the Commissioner

#### First Report: Reportable Irregularity

##### [Firm Letterhead]

[Date]

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

Email: [independentreview@cipc.co.za](mailto:independentreview@cipc.co.za)<sup>2</sup>

Dear Sir/Madam

#### **FIRST REPORT: REPORTABLE IRREGULARITY**

**NAME OF COMPANY:** [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 Regulations, 2011 (the "Regulations").

I/We have been engaged by [insert name of company] to independently review the annual financial statements of the company for the year ended [insert reporting date].

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

Particulars of the reportable irregularity are:

*[Provide particulars of the reportable irregularity and include such other information and particulars as the independent reviewer considers appropriate. This section should also set out the reportable irregularity clearly and concisely, including stating the actual section of the legislation that is allegedly being contravened, for example the relevant section of the Companies Act.]*

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

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<sup>2</sup> The Commission has a dedicated e-mail address that should be used for purposes of submitting reportable irregularity reports.

Please acknowledge receipt of this report.

Yours faithfully

*[Name of Independent Reviewer]*

Partner / Director *[Delete if not applicable, or whichever is not applicable]*

Chartered Accountant (SA) / Associate General Accountant (SA) *[Delete whichever is not applicable]*

*[Independent Reviewer's direct email address]*

*[Independent Reviewer's direct telephone number]*

## 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 company being independently reviewed]

[Address]

Dear Members

#### REPORTABLE IRREGULARITY

This letter is in accordance with the requirements of Regulation 29(7) of the Companies Regulations, 2011 (the "Regulations").

Regulation 29(1)(b) of the Regulations defines a reportable irregularity as any act or omission committed by any person responsible for the management of a company, 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/We have reason to believe that a reportable irregularity has taken or is taking place and, as required by the Regulations, I/we have reported particulars of the irregularity to the Companies and Intellectual Property 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 any legal determination, as may be applicable, in respect of the 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 Regulations requires me/us as soon as is reasonably possible, but no later than 20 business days from the date on which the initial report was sent 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 I am/we are 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 I am/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/We invite you to discuss my/our report to the Commission, at a meeting to be arranged as soon as possible, and at that meeting I/we will afford you the opportunity to make representations in respect of my/our report.

[OR] [*Delete whichever paragraph is not used*]

Please contact me/us as soon as possible to discuss my/our report to the Commission, and in order for the board of the company to have an opportunity to make representations in respect of my/our 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 Regulations.

Please acknowledge receipt of this report.

Yours faithfully

[*Name of Independent Reviewer*]

Partner / Director [*Delete if not applicable, or whichever is not applicable*]

Chartered Accountant (SA) / Associate General Accountant (SA) [*Delete whichever is not applicable*]

[*Independent Reviewer's direct email address*]

[*Independent Reviewer's direct telephone number*]

## APPENDIX C

### Template letter to the Commissioner

#### Second Report: Reportable Irregularity

##### [Firm Letterhead]

[Date]

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

Email: [independentreview@cipc.co.za](mailto:independentreview@cipc.co.za)<sup>3</sup>

Dear Sir/Madam

#### **SECOND REPORT: REPORTABLE IRREGULARITY**

**NAME OF COMPANY:** [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(8) of the Companies Regulations, 2011 (the "Regulations").

I/We refer to my/our first report dated [insert date of first report]. I/We have included a copy of the written notice which was sent together with the above mentioned report to the members of the board of the company.

I/We 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/We have also undertaken such further investigations as I/we considered necessary. I/We have included written representations made by members of the board of the company in respect of the report.

[OR] [Delete whichever paragraph is not applicable]

Although I/we 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/us. However, I/we have undertaken such further investigations as I/we considered necessary. [or] I/We have also been unable to undertake such further investigations as I/we considered necessary. [Delete whichever sentence is not applicable.]

I/We report that in my/our opinion no reportable irregularity has taken place or is taking place [or] 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 [or] the reportable irregularity is continuing. [Delete the conclusions which are not applicable.]

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<sup>3</sup> The Commission has a dedicated e-mail address that should be used for purposes of submitting reportable irregularity reports.

Details and information in support of my/our statement above are as follows:

*[Provide detailed particulars and information supporting the independent reviewer's conclusion as stated in the previous paragraph.]*

Contact details of reference person of the company<sup>4</sup>

- *[Insert name of contact person]*
- *[Insert title of person that can be contacted – a director or manager]*
- *[Insert telephone number of contact person]*
- *[Insert email address of contact person]*
- *[Insert postal address of company]*

Please acknowledge receipt of this report.

Yours faithfully

*[Name of Independent Reviewer]*

Partner / Director *[Delete if not applicable, or whichever is not applicable]*

Chartered Accountant (SA) / Associate General Accountant (SA) *[Delete whichever is not applicable]*

*[Independent Reviewer's direct email address]*

*[Independent Reviewer's direct telephone number]*

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<sup>4</sup> The contact details of a reference person of the company are only required when the independent reviewer's conclusion is that the reportable irregularity is continuing.