APPLICATION FOR EXEMPTION FROM DISCLOSURE OF INFORMATION IN THE ANNUAL FINANCIAL STATEMENTS IN TERMS OF SECTION 15A(1)(B) OF THE COMPANIES ACT, 1973

Introduction
In the past there has been uncertainty regarding the procedures to be followed when making application in terms of section 15A(1)(b) for exemption from the disclosure requirements of certain sections of the Companies Act or the Fourth Schedule to the Companies Act. There has also been uncertainty regarding the circumstances in which the Registrar of Companies will grant disclosure exemptions in terms of this section. Following discussions with the Registrar, the Institute is now able to clarify these issues.

Exemptions
The Registrar has confirmed that exemptions from disclosure in terms of section 15A(1)(b) will only be considered where disclosure of the information would be detrimental to the national interest. Applications for exemption for other reasons, such as precluding competitors from gaining information which may be detrimental to the company, will not be considered. Similarly, applications for exemption which affect the fair presentation of the financial information will not be considered unless it can be demonstrated that compliance would result in the national interest being adversely affected.

Applications should be motivated by a statement specifically giving the reasons why disclosure of the information stated above would be detrimental to the national interest.

In regard to exemptions concerning the disclosure of information about foreign subsidiaries, the Registrar will normally only grant exemptions in respect of the following information:
• name of subsidiary
• country of incorporation
• nature of business.

This means that the financial position, results, cash flows and other financial information need to be included in the group financial statements in the appropriate manner. Exemptions from including such information in the group financial statements will only be granted in exceptional circumstances.

.05 On application to the Registrar, companies will be granted an exemption not to disclose the identity of the holding company.

.06 It must be emphasised that approval by the Registrar, in terms of section 291, for group annual financial statements not to deal with a subsidiary, does not imply that exemption is granted in terms of section 15A(1)(b) from the obligation to disclose particular information concerning the subsidiary, such as that referred to under point .04 above.

.07 An application for the renewal of an exemption as well as all new applications must be supported by a letter from the company’s directors together with a letter from the auditors stating:

• that the non disclosure of the information referred to will not affect the fair presentation of the financial information and the auditors ability to express an unqualified opinion on the financial statements, or
• that the non disclosure of the information referred to will affect the fair presentation of the financial information and accordingly the auditor will need to qualify the audit report.

.08 Where exemptions are granted the company’s directors and its auditors will have to confirm annually to the Registrar’s office that:

• the annual financial statements have been prepared in compliance with the conditions under which the exemption has been granted, and
SECTION 15 A (1) (b) OF THE COMPANIES ACT

- the circumstances leading to the request for the exemption have not changed.

Exemptions will normally be granted for two years, unless the exemption has been granted under exceptional circumstances in which case the exemption will apply for only one year.

Annual financial statements
Where the annual financial statements have been prepared in accordance with an exemption granted by the Registrar in terms of section 15A(1)(b), provided that fair presentation has not been affected, reference need not be made to the fact that certain information has not been disclosed.

Auditor’s report
Where, in the opinion of the auditor, fair presentation of the financial information of a company and its subsidiaries has not been affected by the preparation of the financial statements in accordance with the exemption, the auditor need not make any reference to this fact in the auditor’s report.

Where in the opinion of the auditor fair presentation has not been achieved, the auditor should qualify his/her audit opinion. In such a case the explanatory paragraph of the auditors’ report should refer in broad terms to the nature of the information not disclosed without, however, giving specific details thereof. Guidance on the wording of qualified audit reports can be found in Statement on Generally Accepted Auditing Standard AU 321 (Revised).

Johannesburg KG Mockler
April 1991 Executive Director

Issued July 1991