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Companies Act, No 71 of 2008

Session 6: Accounting and Assurance

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Agenda

- Accounting Records
- Financial Statements
- Compliance and accounting
- Auditors and auditing
- Independent Review

Important Sections

- Increased onus and liability placed on financial statement preparers
- Definition of Company
 - Includes CC's!
- S28 Accounting records
- S29 Financial Statements
 - S29(6)!!!
 - S29(4) FRSC – reg 27
- S30 AFS
 - S30(2A) exemption from audit & review
- Reg 27-30
- CC Act – accounting issues

Accounting Records

S24 Forms & Standards for Co records

- Any documents, accounts, books, writing, records or other information
 - Kept in writing or a form that allows info to be convertible in a reasonable time
 - 7 years or longer if required by another public regulation
- Must keep
 - MOI & rules if applicable
 - Amendments and alterations
 - Record of directors
 - Details per sub (5) for current
 - Past directors – above info kept for 7 years after dir retires from Co
 - Securities (NPO= Members) Register
 - Company Secretary and Auditors Register

- 7 year rule applies to all
 - Reports presented at AGM's
 - AFS
 - Accounting records
 - Notice & minutes of shareholders meetings
 - resolutions adopted
 - any document made available for resolution
 - Copies of any written communication to shareholders
 - Directors and committee meetings (incl Audit Committee's)
- Minister may protect personal privacy wrt former names

S25 Location of Company Records

- Accessible from the Company's registered office or another location(s) within RSA
- File notice if
 - a place other than the registered office is used
 - Move records to another location

S26 Access to Company records

- Any shareholder (beneficial interest/securities/NPO member)
 - Has the right to inspect and copy
 - without charge or prescribed max fee (R100)
 - Information in the following records
 - MOI and Rules
 - Register of directors
 - Reports to annual meetings and AFS
 - Notice and minutes of annual meetings
 - Securities register
- Other persons
 - Securities register & Register of Directors
- Can adjust in MOI provided Promotion of Access to Info Act, 2000, not diminished

- A person may exercise their right to access
 - During reasonable business hours
 - By direct request personally or through an attorney or other in writing
 - Per Promotion of Access to Info Act, 2000
- Company has 14 business days to respond to written request
- Directors Register and Shareholders must be open for inspection during business hours for a reasonable amount of time
- Rights of access in addition to Constitution , Promotion of Access to Info Act, or any other public regulations

- Minister can make any changes
- It is an offence to fail to comply with this section
 - Failure to accommodate or impeded/interfer/attempt to frustrate

S27 Financial year of company

- Must have a financial year end stated in MOI
- First Y/E
 - Begins on date that incorporation is registered
 - Ends on date set out in Notice of Incorporation, which may not be more than **15 months** after date Co started.
- Second financial year = 12 months
 - Begins when previous year ends
 - Ends on the anniversary date contemplated in S27(a) = Registration date(?)
 - Unless Y/E changed

- Can change a Y/E
 - Once a year max
 - New date must be later than date notice is filed
 - Financial year can not exceed 15 months
 - New date overrides previous dates
- Financial YE = Annual accounting period

S28 Accounting records

- Applies to CC's
- A Co must keep accurate & complete accounting records in 1 of the official languages
 - As necessary to satisfy the Act and produce AFS
 - Including any other records in the prescribed format
- Must be kept at Registered Office and kept in accessible form
- An offence to
 - Falsify, mislead, intent to deceive by failing to keep accurate records, or records in prescribed format
 - Or permit another to do so
- Compliance Notice may be issued,
 - “irrespective whether failure constitutes an offence”

Financial Statements

S29 Financial Statements

- Applies to CC's
- If any financial statements including AFS are provided to another, they must
 - Satisfy the financial reporting standards, if prescribed
 - Under 100 PI points(?)
 - Fairly present and explain transactions
 - Show assets, liabilities, equity, income & expenses
 - Date financials published and accounting period they apply to

- S29(e) FS must bear on 1st page, a **prominent notice**, including
- Whether the statements
 - Have been audited in compliance with Act
 - If not audited – independently reviewed
 - Haven't been audited or independently reviewed
- **The name & professional designation, if any, of the individual who prepared, or supervised the preparation**

- FS's prepared must not be false or misleading or be incomplete
- Can provided summary of FS, provided
 - Comply with the prescribed requirements
 - 1st page must “prominently” disclose
 - Summary and dates covered
 - Audited, independently reviewed or not
 - Name & designation of preparer or supervisor
 - How person can get the full set of AFS

- Minister after consulting FRSC may make regulations prescribing
 - Financial reporting standards
 - Form & content of summaries
- Any regulations must
 - Promote sound & consistent accounting policies
 - Public Co – in accordance with IFRS set by IASB
- Regulations may establish reporting standards for profit & non profit Co's, and sub categories of profit Co's

- Subject to S214(2) “*False statements, reckless conduct & non compliance*” a person is guilty of an offence if the person **is party to preparation, approval, dissemination, or publication** of
 - Any FS or summary of FS knowing that those statements fail to comply or are misleading

S30 Annual Financial Statements

- Applies to CC's
- Must prepare FS's within 6 months of YE (can be shorter if necessary to get notice out for AGM)
- Must be audited if Public, state owned or required by Regulations
 - Primary activity to hold assets in a fiduciary capacity of > R5 million
 - NPO: state involvement or foreign
- Can be voluntarily audited
- Independently reviewed if required by Regulations

- Public interest score (Reg 26(2)):
 - Average no of employees during yr = no. of points
 - 1 point for each R 1 million (part thereof) of third party debt
 - 1 point for each R 1 million (part thereof) of turnover
 - 1 point per owner (beneficial interest)
- Audit:
 - over 350 pts
 - 100 to 349 pts and internally compiled
- Independent Review
 - 100 to 349 pts and externally compiled
- CC's still need Accounting Officer's Report

Independent Review vs. Audit (Regulations)

	Always require an audit (never exempt)	
Over 350 points		
Between 100 and 350	AFS's internally compiled (by Co employee)	AFS's externally compiled (by an independent accounting professional)
	Will require an audit (never exempt)	Will be independently reviewed unless exempt per S30(2A) – owner managed
Under 100 points	Will be independently reviewed unless exempt per S30(2A) – owner managed	

- S30(2A) Exemption from audit or independent review
 - If every person who is a holder of, or has beneficial interest in, any securities issued by the company
 - Is also a director of the company,
 - That company is exempt from audit/independent review
- Applies to those companies that have a PI Score of less than 350
- If another law requires, not exempt

- Annual Financial Statements must include
 - Auditors report
 - Directors Report
 - Approved by BoD and signed by an authorised director
 - Be presented at the 1st shareholders meeting after approval

- **S30 (4) to (6) Additional disclosure if AFS audited:**
 - Remuneration & benefits received by
 - Each director
 - Individuals who hold (have held) a prescribed office
 - Pensions paid by the Co or to a pension scheme for.
 - Current & past directors
 - Individuals who hold (have held) a prescribed office
 - Compensation paid for loss of office
 - Current & past directors
 - Individuals who hold (have held) a prescribed office
 - No. & class of any securities held plus compensation received by Co for securities
 - by the directors or prescribed officers
 - Anyone related to them
 - Details of service contracts
 - Each director
 - Individuals who hold (have held) a prescribed office

- Remuneration or benefits paid or receivable by Directors or Prescribed officers
 - As directors/prescribed officers
 - Includes
 - for being a Director/PO of another Co in Group
 - In connection with carrying on the affairs of the Co/another Co in Group

- Remuneration includes:
 - Fees paid to directors for services rendered by them to Co/ on behalf of Co
 - Includes amount received for accepting office
 - Salary, bonuses, performance related payments
 - Expense allowances
 - Director not required to account for
 - Contributions paid under pension scheme not otherwise required to be disclosed

- Remuneration includes (cont):
 - The value of any option/right given directly/indirectly
 - to current/past/future director (or any person related to them)
 - Financial Assistance to subscribe/purchase securities
 - to current/past/future director (or any person related to them)
 - Contemplated by S44

- Any loan or other financial assistance by the co
 - to current/past/future director (or any person related to them)
 - Or any loan made by a 3rd party to any such person, (Contemplated by S45) if the Co is guarantor of that loan
 - Disclose the value of interest (deferred, waived, forgiven; or
 - Disclose the differential value between market interest rate for similar transaction and that interest rate granted (if less than FV)

- S30(7) Minister has authority to have different requirements for different categories of Co
 - Audit vs independent review
 - Details of independent review
- S30(8) independent review not an audit in terms of APAct

Who can conduct an independent review (reg 29)

- An independent reviewer must be
 - A registered auditor (IRBA)
 - A member of good standing of a professional body accredited to S33 of APAct (IRBA)
 - If PI Score less than 100, extended to persons who qualify to be accounting officers of CC's
 - Can not be involved in the preparation of AFS
 - Independent accounting professional
- Reportable irregularities
- ISRE 2400 must be used when performing an independent review per Co Act Regs.

Accounting Frameworks

- IFRS vs. IFRS for SME's vs. SA GAAP
- Micro GAAP?
- Less than 100 PI pts, FS compiled internally??
 - Wild west
- General vs. Special Purpose Reporting
- Public Accountability (IFRS style)

	General vs Special Purpose Reporting	Publicly Accountable?
IFRS	General	Yes
IFRS for SME's	General	No
Micro GAAP	Special	No

S31 Access to FS & related info

- In addition to S26
- S/h or person with beneficial interest
 - Entitled without demand to receive notice of publication of FS (steps to obtain)
 - Get a copy of AFS at no expense on demand
- Judgement creditor
 - Informed that there is appears to be insufficient disposable property to satisfy judgement
 - Can demand copy of AFS (5 bus days to deliver without charge)
- Trade Unions through the Commission (conditional) to start Business Rescue

- Offence not to accommodate a reasonable request made by an appropriate person
 - Impede, interfere or attempt to frustrate

Compliance and Accounting

S32 Use of Company Name and Reg No.

- Provide full details on demand
- Can't misstate name & no. With the intent to deceive
- Must use Commission's interim name if allocated
- A person can't
 - Use Co name to represent it if it doesn't have authority
 - Convey a false impression that the name is the name of Co if it isn't
- Company name and reg no must appear on all
 - notices & official publications
 - Bills of exchange, promissory notes, delivery notes, cheques, orders for money, invoices, receipts, letters of credit
 - (electronic or hardcopy)

S33 Annual Returns

- Must file within prescribed period after end of anniversary of incorporation
- Required form and fee
- Include
 - audited AFS
 - Any other prescribed info
- Every year must designate a person who is responsible
 - No company secretary??

Auditors and Auditing

Voluntary vs Statutory Audits....

S34 Additional accountability

- Chapter 3 of Act applies to
 - Public Co
 - State owned Co
 - Voluntary MOI requirement

Auditors (chapter 3 part C)

- Appoint auditor annually
- Registered RA
- S84 (5) Disqualified to act as director, disqualifies auditor as well
- SAICA handout
- In addition, can' be
 - Director or PO of Co
 - Employee or consultant engaged for more than 1 year that has been involved with Co acc records or AFS
 - Company secretary (firm of CS's)
 - Was auditor for 5 year's preceding appointment
- Acceptable to Co's Audit Com as independent
- 40 days from incorporation to appoint

- Reappointment of retiring auditor automatic unless:
 - No longer qualifies, willing or is able
 - Subject to audit com approval
 - Notice of intended resolution to appoint another
- 40 b days to fill vacancy

Resignation of auditors

- Effective from when notice filed
- 40 days
- If vacancy
 - BoD have 15 days to make recommendation (at least 1 name) to Audit Com
 - If within 5 b days Audit com does not in writing reject proposal, BoD may appoint
- Change in composition of a firm of auditors does not constitute a vacancy by itself
 - If less than 50% of firm's members remain = vacancy
 - Resignation or removal of CS = resignation of Auditor (S89)

S92 Rotation of Auditors

- 5 year limit (same individual)
- If served for 2 or more years and resigns, can't be reappointed for a further 2 financial years
- Joint auditors can't relinquish office in same year

Independent Review

Independent Review

- Who may act as a reviewer?
- Statutory independence
- Reportable irregularities
- Rotation?
- Removal?

Who can conduct an independent review (reg 29)

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 - A member of good standing of a professional body accredited to S33 of APAct (IRBA)
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Reviewers for below 100 points

- The South African Institute of Chartered Accountants (SAICA)
- Auditors registered in terms of the provisions of the Auditing Profession Act, 2005(RA)
- The Southern African Institute of Chartered Secretaries and Administrators (ICSA)
- The Chartered Institute of Management Accountants (CIMA)
- The South African Institute of Professional Accountants (SAIPA)

- The Institute of Accounting & Commerce (IAC) - members who have obtained the Diploma in Accountancy
- The Association of Chartered Certified Accountants (ACCA)
- The Chartered Institute of Business Management (MCIBM)
- The South African Institute of Business Accountants (SAIBA)
- The South African Institute of Government Auditors (SAIGA)

Reporting a Reportable Irregularity

What is CIPC thinking: Independent review and reportable irregularities

- CIPC wants to encourage independent reviews
- Definition of reportable irregularity and reporting process
- Factual vs Commercial insolvency
- Guidance Note: Application of Section 22 of Companies Act
- RI's must be reported to independentreview@cipc.co.za

Reportable irregularities per Co Act

- Regulation 29(1)(b) defines a reportable irregularity for purposes of an independent review as being:
 - any act or omission
 - committed by any person responsible for 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 the company
 - **OR**
 - is fraudulent or amounts to theft
 - **OR**
 - causes or has caused the company to trade under insolvent conditions.

Response to an RI

- **Step 1:** Send written report to the Commission (the CIPC) “without delay”
- **Step 2:** Inform the board of directors of the company
- **Step 3:** Discuss the report with members of the board of the company
 - BoD opportunity to make representations
 - Meeting must happen within 20 business days of sending CIPC report

- **Step 4:** Send a 2nd report to the Commission regarding the status of the reported irregularity
 - Status 1: no reportable irregularity had taken place or is taking place
 - Status 2: suspected irregularity is no longer taking place and that adequate steps have been taken
 - Status 3: the reportable irregularity is continuing
- **Step 5:** The Commission notifies appropriate regulators, if necessary

QUESTIONS

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THANK YOU FOR YOUR PARTICIPATION



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