



## ADDENDUM TO SEMINAR NOTES

The Impact of the Companies  
Regulations

### PREAMBLE

On Wednesday 20 April 2011, the DTI issued a media release confirming that the new Companies Act, Act No 71 of 2008, was signed by the President, and that the new Companies Act will come into effect on 1 May 2011.

On the same day, the Companies Regulations 2011 was published in the Government Gazette, to be effective from 1 May 2011.

THE IMPACT OF THOSE REGULATIONS IN RELATION TO THE SEMINAR NOTES IS SET OUT IN THE FOLLOWING PARAGRAPHS:

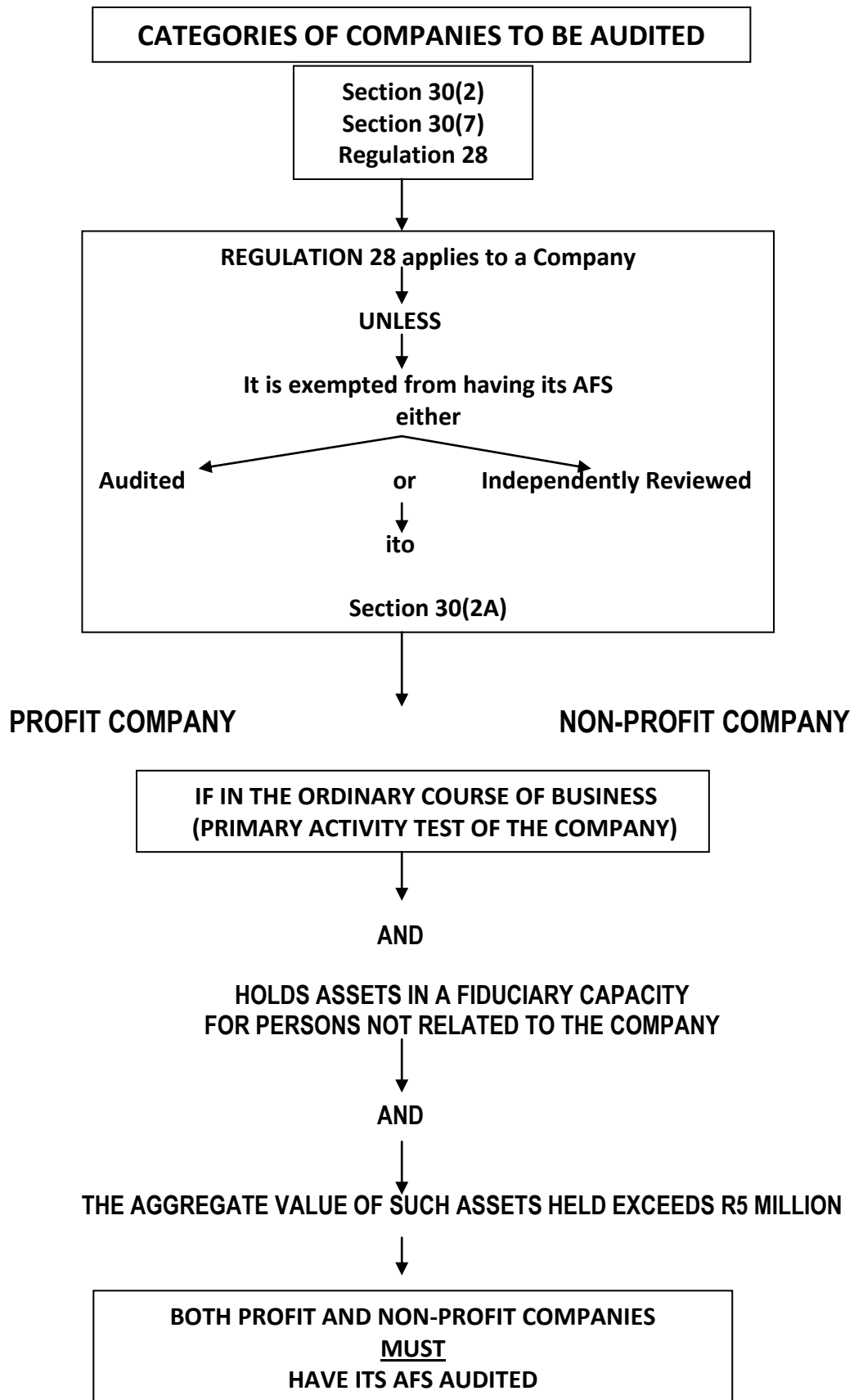
#### 1. PUBLIC INTEREST SCORE

In terms of Regulation 26(2), the new definition is as follows:

“For the purposes of regulations 27 to 30, 43, 127 and 128, every company must calculate its ‘public interest score’ at the end of each financial year, calculated as the sum of the following –

- a) a number of points equal to the **average** number of employees of the company during the financial year;
- b) one point for every R 1 million (or portion thereof) in **third party liability** of the company, at the financial year end,
- c) one point for every R 1 million (or portion thereof) in turnover during the financial year; and
- d) one point for every individual who, at the end of the financial year, is known by the company –
  - i. in the case of a **profit** company, to directly or indirectly have a beneficial interest in any of the company’s issued securities; or
  - ii. in the case of a **non-profit** company, to be a member of the company, or a member of an association that is a member of the company.

2. CATEGORIES OF COMPANIES TO BE AUDITED AND INDEPENDENTLY REVIEWED





**ANY NON-PROFIT COMPANY**

Reg 28(2)(b)



**IF  
IT IS INCORPORATED**



- a) Directly / indirectly by the State;
  - b) An organ of the State;
  - c) A state-owned company;
  - d) An international entity;
  - e) A foreign state entity or company
- or
- a) Where the non-profit company primarily performs a statutory or regulatory function into any legislation;
  - b) Or to carry out a public function at the direct or indirect direction of either of the following:
    - i. an organ of the state;
    - ii. a state-owned company;
    - iii. an international entity;
    - iv. a foreign state entity;
    - v. or for a purpose ancillary to any such function.



**AND**



- a) ANY OTHER COMPANY, WITH A PUBLIC INTEREST SCORE FOR THAT FINANCIAL YEAR (CALCULATED IN ACCORDANCE WITH REGULATION 26(2)):



- i. Above 350 = AUDITED
  - ii. Between 100 and 350 with the following proviso:
    - Its AFS had to be internally compiled and
    - The company meets the requirements of the primary activity test = AUDITED
- ↓
- b) Any company whose Memorandum of Incorporation requires the company to be audited into Section 30
- ↓
- c) Any company that has its AFS voluntarily audited

**COMPANIES WHICH MUST BE  
INDEPENDENTLY REVIEWED**

**ALL OTHER COMPANIES REQUIRE AN  
INDEPENDENT REVIEW**



**SECTION 30(2)  
SECTION 30(7)  
REGULATION 29**



**REGULATION 29 APPLIES TO A COMPANY**

**UNLESS**

**THE COMPANY:**



**Regulation 29(2)(a)**

**is exempt, to Section 30(2A),  
from any requirement to have  
its AFS for that year audited or  
reviewed;**

**Regulation 29(2)(b)**

**is required by its own MOI or  
required to the Act or  
Regulation 28, to have its AFS  
for that financial year audited,**

**Regulation 29(2)(c)**

**has voluntarily had its AFS for  
that year audited.**



**PROVISO**

**AN INDEPENDENT REVIEW CAN ONLY BE APPLIED TO A COMPANY'S AFS  
IN ACCORDANCE WITH ISRE 2400  
REGULATION 29(3)**



↓  
**AN INDEPENDENT REVIEW OF A COMPANY'S AFS  
MUST BE CARRIED OUT:**

**Regulation 29(4)(a)**

In the case of a company whose public interest score for the particular financial year was at least 100, by a:

- iii. Registered auditor, or
- iv. Member in good standing of the Auditing Profession Act (Reg. 33)

**Regulation 29(4)(b)**

In the case of a company whose public interest score for the particular financial year was less than 100, by a:

- i. Person contemplated in paragraph (a), or
- ii. Person who is qualified to be appointed as an Accounting Officer of a Close Corporation ito Section 60(1), (2) and (4) of the Close Corporations Act, 1984 (Act 69 of 1984).

**MUST BE CARRIED OUT BY AN INDEPENDENT REVIEWER  
ito Regulation 29(1)(a)**

**MUST NOT BE CARRIED OUT BY (Reg 29(5))**  
"An independent review of a company's annual financial statements must not be carried out by an independent accounting professional, who was involved in the preparation of the said annual financial statements"

**Definition of Independent Accounting Professional (Reg 26(1)(d))**

"*Independent Accounting Professional*" when used with respect to any particular company, means a person who:

- i) is –
  - aa) a registered auditor in terms of the Auditing Profession Act; or
  - bb) a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Profession Act; or
  - cc) qualified to be appointed as an accounting officer of a close corporation in terms of section 60 (1), (2) and (4) of the Close Corporations Act, 1984 (Act No 69 pf 1984); and

- ii) does not have a personal financial interest in the company or a related or inter-related company; and
- iii) **is not:**
  - aa) involved in the day to day management of the company's business or has been so involved at the any time during the previous three financial years;
  - bb) a prescribed officer , or full-time executive employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years, or
- iv) **is not** related to any person who falls within any of the criteria set out in clause (ii) or (iii).

## **COMPILATION OF FINANCIAL STATEMENTS, FINANCIAL REPORTS, AUDITS AND INDEPENDENT REVIEWS**

### **I STATE-OWNED AND PUBLIC PROFIT COMPANIES**

<b>CATEGORIES</b>	<b>AUDIT / I.R.</b>	<b>FRS</b>
<b>State-owned company</b>	<b>Audit</b>	<b>IFRS, subject to Public Finance Management Act</b>
<b>Public – Listed</b>	<b>Audit</b>	<b>IFRS</b>
<b>Public – Non-listed</b>	<b>Audit</b>	<b>IFRS or IFRS for SMEs*</b>

### **II OTHER PROFIT COMPANIES**

<b>PUBLIC INTEREST SCORE</b>	<b>COMPILED INTERNALLY</b>	<b>COMPILED INDEPENDENTLY</b>
<b>350 +</b>	<b>IFRS or IFRS for SMEs*</b> <b><u>AUDIT</u></b>	<b>IFRS or IFRS for SMEs*</b> <b><u>AUDIT</u></b>
<b>100 – 349</b>	<b>IFRS or IFRS for SMEs* or SA GAAP</b> <b><u>AUDIT</u></b> <b>Registered Auditor Auditing Profession Act</b>	<b>IFRS or IFRS for SMEs* or SA GAAP</b> <b><u>INDEPENDENT REVIEW</u></b> <b>Registered Auditor Auditing Profession Act</b>

<b>&lt; 100</b>	<b>NO FRS – FRS as per MOI</b>  <u><b>INDEPENDENT REVIEW</b></u> <b>Registered Auditor Auditing Profession Act Accounting Officer of CCs</b>	<b>IFRS or IFRS for SMEs * or SA GAAP</b>  <u><b>INDEPENDENT REVIEW</b></u> <b>Registered Auditor Auditing Profession Act Accounting Officer of CCs</b>
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### III NON-PROFIT COMPANIES

CATEGORIES	AUDIT / I.R.	FRS
<b>NPC (Reg 28(2)(b) State-owned / Statutory / Regulatory function</b>	<b>AUDIT</b>	<b>IFRS, subject to Public Finance Management Act</b>

### OTHER NON-PROFIT COMPANIES

PUBLIC INTEREST SCORE	COMPILED INTERNALLY	COMPILED INDEPENDENTLY
<b>350 +</b>	<b>IFRS or IFRS for SMEs *</b>  <u><b>AUDIT</b></u>	<b>IFRS or IFRS for SMEs *</b>  <u><b>AUDIT</b></u>
<b>100 - 349</b>	<b>IFRS or IFRS for SMEs * or SA GAAP</b>  <u><b>AUDIT</b></u> <b>Registered Auditor Auditing Profession Act</b>	<b>IFRS or IFRS for SMEs* or SA GAAP</b>  <u><b>INDEPENDENT REVIEW</b></u> <b>Registered Auditor Auditing Profession Act</b>
<b>&lt; 100</b>	<b>NO FRS – FRS as per MOI</b>  <u><b>INDEPENDENT REVIEW</b></u> <b>Registered Auditor Auditing Profession Act Accounting Officer of CCs</b>	<b>IFRS, IFRS for SMEs* or SA GAAP</b>  <u><b>INDEPENDENT REVIEW</b></u> <b>Registered Auditor Auditing Profession Act Accounting Officer of CCs</b>

Source: Regulations 27, 28 and 29

NOTE: 1. FRS prescribed by Regulation 27, applied to companies with a financial year end starting on or after 1 May 2011

NOTE 2: Independent Review must not be carried out by an independent accounting professional who was involved in the preparation of the said annual financial statements (Reg. 29(5))

\* IFRS for SMEs: subject to scoping requirements

## AUDIT OR INDEPENDENT REVIEW

CATEGORY	COMPILED	AUDIT / I.R.
<u>CATEGORY 1:</u> PUBLIC COMPANY - LISTED PUBLIC COMPANY – NOT LISTED STATE-OWNED COMPANY NON-PROFIT COMPANY (Reg. 26(2)(b) (State-owned / statutory / regulatory function)	N/A N/A N/A N/A	AUDIT AUDIT AUDIT AUDIT
<u>CATEGORY 2:</u> All companies 350 +	N/A	AUDIT
<u>CATEGORY 3:</u> All companies 100 -349	INTERNALLY INDEPENDENTLY	AUDIT I.R.
<u>CATEGORY 4:</u> All companies < 100	INTERNALLY INDEPENDENTLY	I.R. I.R.
<u>CATEGORY 5:</u> All companies : Fiduciary assets > R5 million	N/A	AUDIT



<p><b><u>CATEGORY 6:</u></b></p> <p><b>Owner-Managed Private Companies (Shareholders = Directors) (Sec 30(2)(A))</b></p>	<p>N/A</p>	<p><b>NO AUDIT / I.R.</b></p>
<p><b><u>CATEGORY 7:</u></b></p> <p><b>Close Corporation 350 + (Sec 30(7))</b></p>	<p>N/A</p>	<p><b>AUDIT</b></p>

## **COMPILATION OF FINANCIAL STATEMENTS AND INDEPENDENT REVIEW**

**Reg. 29(5)** confirms the new position as follows:

“An independent review of a company’s annual financial statements **must not** be carried out by an independent accounting professional who was involved in the preparation of the said annual financial statements”

## **SOCIAL AND ETHICS COMMITTEE**

### **Section 72(4):**

“The Minister may by regulation prescribe that a company or a category of companies must have a social and ethics committee, if it is desirable in the public interest, having regard to –

- a) its annual turnover;
- b) the size of its workforce, or
- c) the nature and extent of its activities.

### **Regulation 43:**

43. Social and Ethics Committee

- (1) This regulation applies to –
  - (a) every state owned company;
  - (b) every listed public company;
  - (c) any other company that has in any two of the previous five years, above 500 points in terms regulation 26(2).

## **INDEPENDENT REVIEWER AND INDEPENDENT ACCOUNTING PROFESSIONAL**

Regulation 29(1) identifies the independent reviewer as the person appointed to perform an independent review under Regulations 2011, and is also referred to as the **independent accounting professional**, in Regulation 26(1)(a).

## **OWNER-MANAGED PRIVATE COMPANIES AND TRUSTS**

Section 30(2A) of the Act, exempts a company from either a audit or independent review if the shareholders or directors are the same persons, irrespective of the applicable public interest score.

Regulations 2011 is silent on the position of trusts as shareholders. Consequently, we are of the opinion, that the current status whereby the trustees of the trust that is the shareholder of the company, are the directors of that company, will result in the applicable company qualifying for exemption from either audit or independent review.

**Date of issue: 21 April 2011**