



NOTICE No. 15 of 2021

REQUIREMENT TO VOLUNTARILY DISCLOSE SOLVENCY AND LIQUIDITY TEST PERFORMED IN THE ANNUAL FINANCIAL STATEMENTS

PURPOSE

The Companies and Intellectual Property Commission (“CIPC”) reviews annual financial statements with the objective of monitoring compliance with the International Financial Reporting Standards (IFRS) and the Companies Act, 2008 (“Act”). CIPC is further empowered to promote the reliability of financial statements by among other things, to monitor patterns of compliance with and contravention of financial reporting standards.

Which entities should disclose the solvency and liquidity test in their annual financial statements:

Section 4 of the Companies Act, 71 of 2008 requires directors to perform a solvency and liquidity test when engaging in certain actions or entering into certain transactions. All the entities that during the financial year entered or performed the following transactions:

- Financial assistance for the subscription of securities. For example where the company lends money to any person for the purpose of acquiring that company’s shares (section 44);
- Loans or other financial assistance to related parties, including subsidiary companies, holding companies and directors (section 45);
- Dividends declared to shareholders (section 46);
- Other distributions (as defined) to shareholders, for example writing off a debt owing to the company by its shareholders (section 46);
- Capitalization of shares, whereby the recipient can choose whether to take the shares or take cash (section 47);
- Company or subsidiary acquiring the company’s shares (section 48); and/or
- Amalgamations and mergers (section 113).

Observations

The CIPC, through its compliance monitoring activities stemming from Regulation 30(5), has observed a trend where some companies are not adhering to section 4 of the Act, the solvency and liquidity test. It was also observed during the reviews of annual financial statements that the solvency and liquidity tests were not performed consistently across all types of entities by the board of directors.

In certain annual financial statements reviewed where entities entered in the above-mentioned transactions, the board of directors were not aware that they should satisfy the requirements of the section 4, the solvency and liquidity test. The lack of knowledge and due care by the board of directors are some of the main reasons for the continuous non-compliance with the Companies Act.

CIPC recommends that entities disclose in their annual financial statements that they have performed a solvency and liquidity test as prescribed in terms of the Companies Act, for transactions mentioned above.

It is proposed that part of “**Directors Report/Report of the Director**” should include a statement (see example below) in the Annual Financial Statements:

“ Solvency and liquidity test

The directors have performed the required solvency and liquidity tests required by the Companies Act of South Africa.”

Enforcement

By making the disclosure of the solvency and liquidity test in the annual financial statements, the board of directors acknowledges that they had performed and applied the solvency and liquidity test according to the requirements of the Companies Act. The onus is on the board of directors to disclose true and accurate information in the annual financial statements. It is an offense to disclose false information in the annual financial statements, CIPC is legally obliged to investigate such matters in terms of the Companies Act.

Entities are therefore, urged to comply with the legislated requirements as prescribed in the Act.

Yours Sincerely



Adv. Rory Voller

Commissioner

Date: 27/01/2021