



Companies and Intellectual
Property Commission
a member of **the dtic** group

NOTICE 39 OF 2021

NOTICE TO ACCOUNTING AND AUDITING PROFESSIONAL BODIES

REGULATION 29 OF THE COMPANIES ACT 2008 AS AMENDED ON REPORTING OF REPORTABLE IRREGULARITIES.

This notice is issued in terms of Section 188(2) (b) in conjunction with Regulation 4(b) of the Companies Act, No. 71 of 2008 as amended.

Kindly note that according to our records, Independent Review practitioners are not complying with the requirements of Regulation 29 (6-8). We are not receiving reportable irregularity reports as prescribed for the independent review process (this practise continues as initially reported in 2016).

Practitioners who send first reports, do not follow up with second reports as required in terms of the Companies Act (Regulation 29(8)(c)).

Practitioners also fail to adhere to the timelines provided for in Regulation 29 (6-8) to submit subsequent reports within 20 business days and no notification is given for such, in certain instances. It is requested that any delays resulting in non-compliance be communicated to the Commission through the independent review email address.

We have attached a 'Practice Guideline' for ease of reference, it is in support of our urgent request for compliance in this regard.

It is also requested that the contact details of the entity be provided when submitting the subsequent reports to enable the Commission to effectively deal with the reported matter.

Your continued co-operation in assisting us in successfully and optimally exercising our mandate with regards to independent reviews is greatly appreciated.

Yours faithfully,

Adv. Rory Voller

Commissioner: CIPC

3 / 8 / 2021

the dtic Campus (Block F - Entfutukweni), 77 Meintjies Street, Sunnyside, Pretoria | P O Box 429, Pretoria, 0001

Call Centre: 086 100 2472

Website: www.cipc.co.za

PRACTICE GUIDELINES FOR THE INDEPENDENT REVIEW PROCESSES

AN OUTLINE OF THE PROCESS TO BE FOLLOWED BY THE PROFESSIONAL BODIES IN THE ACCOUNTING AND AUDITING SECTOR AND THE INDEPENDENT REVIEW PRACTITIONERS RELATIVE TO THE EXERCISE OF INDEPENDENT REVIEW OF ANNUAL FINANCIAL STATEMENTS

The Independent Review of Annual Financial Statements (AFS) is dealt with by Regulation 29 of the Companies Regulations, 2011.

'**Independent reviewer**' (IR), means a person referred to in Regulation 29 (4) and who has been appointed to perform an independent review under this regulation.

'**Reportable Irregularity**' (RI) means any act or omission committed by any person responsible for the management of a company- (please cite the source of this definition, e.g. Auditors Profession Act, or Companies Act, etc.)

- (1) Unlawfully has caused or is likely to cause material financial loss to any member, shareholder, creditor or investor of the company in respect of his, her or its dealing with that entity, or
- (2) Is fraudulent or amounts to theft; or
- (3) Causes or has caused the company to trade under insolvent circumstances.

The professional bodies that govern and administer the Independent Reviewers, which is specifically recognized under Section 60 of the Close Corporations Act, 1984 are:

1. SAICA- SA Institute of Chartered Accountants
2. SAIPA- SA Institute of Professional Accountants
3. SAIBA- SA Institutes of Business Accountants
4. ACCA- Association of Chartered Certified Accountants
5. CIMA- Chartered Institute of Management Accountants
- 6. SAIGA- SA Institute of Government Auditors (Not exercising IR currently)**
7. IAC- Institute of Accounting and Commerce
8. CGISA- Chartered Governance Institute of Southern Africa
- 9. IRBA- Independent Regulatory Board for Auditors (Excluded for purpose of IR)**

1. Information required to be contained in a report from an IR practitioner

- a. With regards to the IR's report to the Commission, the RI must be set out clearly and concisely, with the relevant alleged contravention of the Companies Act being stated; that is, the actual section of the Act.

- b. Proof of communication to the management of the said company must also be included with the report.
- c. Contact details, such as a reference person (director or manager), telephone numbers, e-mail addresses, and/or postal addresses must also be included in the (2nd) report, if a reportable irregularity is still continuing.

2. **Regulation 29(6-8) sets out in detail the process that the IR practitioner must follow when reporting an irregularity**

- *(6)(a) 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 Commission (First/Initial report).*
- *(b) The report must give particulars of the reportable irregularity referred to in paragraph (a) and must include such other information and particulars as the independent reviewer considers appropriate.*
- *(7)(a) The independent reviewer must within three business days of sending the report to the Commission notify the members of the board of the company in writing of the sending of the report referred to in subregulation (6) and the provisions of this regulation.*
- *(b) A copy of the report to the Commission must accompany the Notice.*
- *(8) The independent reviewer must as soon as reasonably possible but not later than 20 business days from the date on which the report referred to in subregulation (6) was sent to the Commission-*
 - a) take all reasonable measures to discuss the report referred to in subregulation (6) with the members of the board of the company;*
 - b) afford the members of the board of the company an opportunity to make representations in respect of the report; and*
 - c) send another report to the Commission (second/subsequent report), which report must include-*
 - I. a statement that the independent reviewer is of the opinion that-*
 - (aa) no reportable irregularity has taken place or is taking place; or*
 - (bb) 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*
 - (cc) the reportable irregularity is continuing; and*
 - II. detailed particulars and information supporting the statement*

3. **Regulation 29 (12) states `Every profession recognized by the Minister under Section 60 of the Close Corporations Act, 1984, whose members are entitled to perform an independent review as contemplated in subregulation (4)(b)(ii), must annually file a report with the Commission demonstrating that-**

- a) *It has proper mechanisms for ensuring that its members participate in continued professional development and achievement of professional competence;*
- b) *It has mechanisms to ensure that its members are disciplined where appropriate;*
- c) *It is, and is likely to continue to be, financially and operationally viable for the foreseeable future;*
- d) *It keeps and maintains a proper register of its members;*
- e) *It has in place appropriate programmes and structures to ensure that that is actively endeavoring to achieve the objective of being representative of all sectors of the South African population; and*
- f) *It meets any other requirements that may be determined by the Commission from time to time.*

4. A dedicated e-mail address has been set up for the purpose of receiving IR reports, i.e. Independentreview@cipc.co.za.

It is imperative for all independent review practitioners and professional bodies to comply with the afore-stated provisions, as a failure to do so will result in a contravention under the Companies Act (Regulations) Act 71 of 2008 as amended.

END