



Companies and Intellectual
Property Commission

a member of the dti group

**NON-BINDING OPINION
IN TERMS OF
SECTION 188 (2) (b) OF THE COMPANIES ACT, 2008**

1) S24(1) of the Companies Act in relation to the Income Tax act

S24 of the Companies Act must be read in-conjunction with S5(4)(a) , in that, that section states as follows:-

"If there is any inconsistency between any provisions of this Act, and a provision of any other national legislation –

a)the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second"

If a company therefore, in terms of the Companies Act retains documents, accounts etc as per the section for a period of seven years, which is longer than the Income Tax Act provisions containing a shorter five year period, there will be consistency in terms of application and without a contravention.

The application of the seven year retention period as per the Companies Act must also be read with S5(4)(b)(ii) in that the provisions of the Companies Act prevail also as regards the Income Tax Act applicable period.

2) Registration of a Company by using a registration number being in conflict with the Consumer Protection Act

The area of conflict between the Acts is not highlighted in the submission but the CIPC in any event sees no conflict accordingly.

The registration of a business/trading as name as per the Consumer Protection Act is a means of providing for a mechanism whereby the identity of the parties using that business/trading as name is ascertained and that is the purpose of that legislation in that regard.

Similarly the use of a registration number as a name in a company will also provide or point to the identity of the incorporators and/or directors and therefore be in sync with what the Consumer protection Act hopes to achieve.

The registration requirement of the Consumer Protection act is furthermore only applicable where no registration under any other Act or public regulation is required.

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3) Are owner managed entities expected to calculate public interest scores

Yes, they are.

S30(2A) of the Companies Act as amended states that "owner –managed" companies even though exempted from an audit and an independent review, that exemption falls away if it meets the Public interest score for an audit only as determined by Regulation 28(c) of the Companies Act.

Furthermore Regulation 26(2) specifically states that EVERY company regardless of any exemption to have its Annual Financial statements audited or independently reviewed as per S30(2A) of the Companies Act must calculate its Public Interest Score.

4) Should Owner-Managed Companies also appoint an Independent Reviewer

No, they are exempt from Independent Review. Their public interest score only determines if they should be audited, not Independently Reviewed. They may do so voluntarily.

5) Internal compilation definition and whether a compiler and Independent Reviewer can be from the same firm

Internal compilation is not defined in the Companies Act Regulations but independently compiled financial statements is defined in Regulation 26(1)(e) as:

- 1) Being prepared by an independent accounting professional
- 2) On the basis of financial records provided by the company
- 3) In accordance with any relevant financial reporting standards

The Independence aspect is spelt out in Regulation 26(1)(d) and its subsections.

Therefore by interpretation, internal compilation is all that Regulation 26(1)(d) and its subsections are not.

As regards whether a compiler and an independent reviewer can be two qualifying professionals from the same accounting firm the answer is, yes.

The requirement is only as per Regulation 29(5) in that an independent review of a company's financial statements must not be carried out by an independent accounting professional who was involved in the preparation of the financial statements

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6) Should independent reviewers be rotated similar to auditors.

The Companies Act and Regulations contain no such requirements for independent reviewer rotation.

7) How is a trust calculated in terms of a Public interest score

Regulation 26(2)(d)(i) requires every individual with a direct or indirect beneficial interest in the companies shares to be counted. In the case of a trust the beneficiaries should therefore be counted as one point per beneficiary and not the trust as a single unit. Trustees are not counted unless they are beneficiaries as well.

8) How is a company holding shares in another company, Public interest score calculated

The answer to seven above also applies herein.

9) When a beneficial interest holder is also an employee of the company, are they counted twice for the Public interest score

The answer is no. Counting the same person twice will not contribute to the protection envisaged through the public interest score.

10) When averaging the employees, do you annualize the contract workers

Annualization must be in terms of the financial year concerned.

11) Do Trusts require an audit irrespective of the type of trust and or the assets of the trust

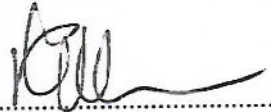
The question is not understood in the context of the public interest score provision.

12) In terms of S 129(3) of the Companies Act, when does the calculation of the five working days commence, the day that the filed notice is sent or when it is received by the Commission.

The calculation starts from the first day after the company has adopted the resolution and must therefore be filed on or before the fifth day so calculated.

13) Are there any guidelines for S138(2) of the Companies Act

Guidelines are currently being developed by the Commission and an interim practice note will soon be published.


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Adv Rory Voller
Acting Commissioner
Date: 30/6/11

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