

CIPC publication of Notice 38 of 2020

Introduction and background

The Companies Act, 2008 (Companies Act) states in Section 30(2) (b) (i) that the annual financial statements must be audited if required by the Companies Regulations, 2011 (regulations) in terms of subsection (7) also taking into account the public interest, having regard for the following factors: annual turnover, size of workforce or nature and extent of activities.

Section 30(2) (b) (ii) thereafter states that the annual financial statements must be either (a) audited voluntarily if required in the Memorandum of Incorporation (MOI) or by shareholder resolution or board decision, or (b) independently reviewed in a manner that satisfies the regulations in terms of subsection (7). The question arises whether the additional requirements that apply to companies (and also close corporations) required to have their annual financial statements audited in terms of the Companies Act, also applies to companies that choose to have their annual financial statements audited voluntarily in terms of the MOI or a shareholder resolution or a board decision.

CIPC view

The CIPC released an Information Notice discussing 'voluntary audit' as it is introduced in Section 30(2) (b) of the Companies Act and then draws specific attention to Section 30(4) which addresses the disclosure of directors' remuneration. It states, among other, that *"since The Companies Act requires that a company be voluntarily audited, should its Memorandum of Incorporation, a shareholders resolution, or the board of directors so determines same, this is then a requirement in terms of the Act. Hence, moving on to subsection 4, it is stated that if the Act requires this, then the audit must include the disclosure of remuneration, and other amounts (specified above) in respect of each director.*

All requirements relevant to a mandatory audit will then also include a 'voluntary audit' as per the afore-mentioned provisions. The criteria must remain the same for both types of audit ..."

The conclusion-section of the Information Notice states: *"All entities which file audited financial statements, regardless of it being mandatory or voluntary, must ensure that there is disclosure of directors' remuneration, as prescribed in Section 30(4), inter alia."*

CIPC Notice 38 of 2020

The CIPC released Notice 38 of 2020 setting out their observations that companies are not disclosing directors' remuneration for companies are required to have their annual financial statements audited either in terms of the Companies Act or voluntarily, to disclosure directors remuneration.

SAICA view

SAICA is of the view that requirement to disclose directors' and prescribed officer's remuneration in terms of section 40(4) of the Act, applies only to those companies required to be audited in terms of the Act. Accordingly, companies that are audited voluntarily i.e. where the requirement arises in terms of the company's MOI, a shareholders' resolution, or a decision of the board of directors, are not required to disclose directors' and prescribed officers' remuneration in their annual financial statements, as set out in S30(4) of the Act.

Way forward

The CIPC in terms of Section 188(2)(b) states that the CIPC may provide guidance to the public by issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of the Act.

The CIPC also indicated that failure to adhere to the above-mentioned legislated requirements is a contravention of the Act and may lead to possible investigation as prescribed in Section 168 of the Companies Act.

SAICA cannot override the CIPC's decision to implement their interpretation of the Act, although we don't have the same view. SAICA will continue to engage the CIPC and Department of Trade and Industry on the interpretation but companies and their directors need to obtain their own legal advice on their interpretation of the Act and whether they will disclose director's remuneration or not.

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Important correspondence:

- [CIPC Notice 38 of 2020 – Audited annual financial statements: Requirement to disclosure remuneration and benefits of directors and prescribed officers](#)
- [SAICA summary of legal opinion on the interpretation of section 30 of the Companies Act 71 of 2008](#)
- [SAICA summary in relation to identified requirements of the Companies Act](#)

- [Information Notice: Voluntary Audits dated 8 June 2018](#)
- [Confirmation Notice: Notice 69 of 2018 on 15 October 2018](#)