

MEMORANDUM: SUMMARY OF SENIOR COUNSEL'S OPINION ON THE INTERPRETATION OF SECTION 30 OF THE COMPANIES ACT 71 OF 2008 ("THE ACT"), FOLLOWING THE INFORMATION NOTICE PUBLISHED BY THE CIPC ON ITS WEBSITE ON 8 AUGUST 2018 AND 5 OCTOBER 2018

Please note:

- 1. Every effort has been made to ensure that the information in this summary document is correct. Nevertheless, information is given purely as guidance to assist with particular problems related to the subject matter and SAICA will have no responsibility to any person for any claim of any nature whatsoever that may arise out of or related to the contents of this guide.*
 - 2. The information provided in this document does not constitute legal advice and should be read in that context.*
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Memorandum

To: Juanita Steenekamp **From:** Karien Norval / Ariella Scher
Our ref: SAI20003
Subject: Summary of Adv Trengove SC's opinion **Date:** 03 April 2019

SAICA has taken legal advice from Senior Counsel on the interpretation of section 30 of the Companies Act 71 of 2008 ("the Act"), following the Information Notice published by the CIPC on its website on 8 August 2018 and 5 October 2018.

Section 30(2) of Act requires certain companies to have their annual financial statements audited, and other provisions of the Act impose additional duties on those companies.¹ SAICA sought advice on whether a company, which is not otherwise required to have its financial statements audited, but has voluntarily elected to do so (by way of its memorandum of incorporation, a shareholders' resolution or a board resolution), is subject to those additional duties imposed in the Act.

SAICA has been advised that the Act clearly distinguishes between companies which are *obliged* to have their financial statements audited,² and those companies which *may choose* between having their financial statements either voluntarily audited³ or be independently reviewed.⁴ In the latter instance, an audit of financial statements is not required and the company has the discretion to make the relevant election.

Senior Counsel's advice concludes that *"a company, which is not otherwise required to have its financial statements audited, but voluntarily does so pursuant to a requirement of its memorandum of association, shareholders' resolution or board decision, is not subject to the additional duties imposed by sections 30(4), 33(1)(a), 56(7)(b) and 84(1)(c)(i) of the Companies Act"*.

ENDS.

¹ See Companies Act ss 30(4); 33(1)(a); 56(7)(b) and 84(1)(c)(i).

² Companies Act ss 30(2)(a) and (30)(2)(b)(i).

³ Companies Act s (30)(2)(b)(ii)(aa).

⁴ Companies Act s (30)(2)(b)(ii)(bb).