

SUMMARY OF THE JUDGMENT

THE NEW COMPANIES ACT - PART VII: MUST MY COMPANY OR CC BE AUDITED?

The audit and review requirements of the Companies Act 71 of 2008

This is the seventh and last in a series of notes in which we guide you through the essentials of the new Companies Act, with specific emphasis on aspects that will affect typical property transactions. The focus in this insert is on the auditing and independent review requirements in respect of companies and close corporations.

New auditing requirements imported

The new Companies Act, which came into effect on 1 May 2011, introduced significant changes to the auditing and accounting requirements for all companies. Under the old Companies Act, all companies (i.e. private and public) were required to be audited. The new Act changed this and brought in different levels of financial overview for different categories of companies.

How does it work now?

Public and State-Owned companies

1. All public and state-owned companies must be audited.

Private, personal liability and non-profit companies

2. Private, personal liability and non-profit companies are only required to be audited when desired 'in the public interest'. The term 'public interest' in the Act refers to the common wellbeing and general welfare of the business and investing community and will be indicated by prescribed criteria (such as the value of the company's turnover or assets, the number of employees and the number of individuals who have a direct or indirect interest in the company's securities, and the like).
3. Private, personal liability and non-profit companies falling outside the public interest criteria only need to have their annual financial statements independently reviewed.

Close corporations that are deemed to be in the public interest are also required to be audited, or otherwise need to undergo an independent review.

4. There is an exemption from independent review: if the private, personal liability and non-profit company is an owner-managed company (i.e., where all shareholders of the company are also directors), then no independent review is required. This applies similarly to close corporations. But note that whilst many close corporations are owner-managed, but this is not always or necessarily the case. Where a close corporation is owned and managed by a trust and not all of the trustees are members of the close corporation, the corporation is not owner-managed and will require an audit or an independent review, depending on the public interest score of the close corporation.

Despite these lesser stringent audit requirements, many companies may still choose voluntarily to be audited, whether it is because company creditors require it (e.g. a bank to whom the company applies for a loan), for good governance reasons or because the company's Mol prescribes a full audit.

CONTACT US

- CAPE TOWN
Tel: 021 406 9100
- SOMERSET MALL
Tel: 021 850 6400
- TYGERVALLEY
Tel: 021 943 3800
- CLAREMONT
Tel: 021 673 4700
- TABLEVIEW
Tel: 021 521 4000
- JOHANNESBURG
Tel: 011 853 8300
- FISH HOEK
Tel: 021 784 1580