

Section 30 of the Companies Act, Act 71 of 2008, requires a company to prepare annual financial statements within six months after the end of its financial year.

## Requirement to submit annual financial statements

### Section 30 of the Companies Act – Annual Financial Statements

- (1) *Each year, a company must prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).*

### Regulation 30 of the Companies Act Regulations – Company Annual Returns

- (2) *A company that is required by the Act or Regulation 28 to have its annual financial statements audited must file a copy of those audited statements—*
- (a) *on the date that it files its annual return, if the company's board has approved those statements by that date; or*
- (b) *within 20 business days after the board approves those statements, if they had not been approved by the date on which the company filed its annual return.*
- (3) *A company that is not required in terms of the Act or Regulation 28 to have its annual financial statements audited may, at its option—*
- (a) *file a copy of its audited or reviewed statements together with its annual return; or*
- (b) *undertake to file a copy of its audited or reviewed statements within the time contemplated in sub-regulation (2)(b).*
- (4) *A company that is not required to file annual financial statements in terms of sub-regulation (2), or a company that does not elect to file, or undertake to file, a copy of its audited or reviewed annual financial statements in terms of sub-regulation (3), must file a financial accountability supplement to its annual return in Form CoR 30.2.*

## What does this mean?

Regulation 30 requires the submission of a company's financial statements together with its annual return by **"all companies that is required to have its financial statements audited"**.

The following companies are required to have its financial statements audited:

- public companies
- state owned companies,
- any company that falls within any of the following categories in any particular financial year:
  - (a) any profit or non-profit company if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R 5 million;

(b) any non-profit company, if it was incorporated—

- (i) directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a company; or
  - (ii) primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of the state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function; or
- (c) any other company whose public interest score in that financial year is
- (i) 350 or more; or
  - (ii) at least 100, but less than 350, if its annual financial statements for that year were internally compiled.

The above companies should therefore file a copy of its approved financial statements together with its annual return or within 20 business days after approval of the financial statements by the Board.

## Reportable Irregularities

Section 45 of the Audit Profession Act requires an auditor that is satisfied or has reason to believe that a reportable irregularity has taken place or is taking place in respect of that entity to send a written report to the Independent Regulatory Board of Auditors (IRBA) with particulars of the reportable irregularity.

## Companies and Intellectual Property Commission (CIPC)

The CIPC was established in terms of the Companies Act with one of its objectives to "promote compliance with the Act". The CIPC received Reportable Irregularity reports from the IRBA, where companies were reported by their auditors for failure to comply with Section 30 of the Companies Act in respect of preparing its annual financial statements within six months after the end of its financial year end.

Where a company is required to be audited the financial statements must include the audit report which means that the audit must also be finalized within 6 months after year-end.

The CIPC recently utilized the provisions of Section 175 of the Companies Act, which provides for an administrative fine to be issued for a company where a Compliance Notice has been issued for specific continuous non-compliance with the requirements of the Companies Act.

As a result, court orders were granted for an administrative fine to be paid by these non-compliant companies. The administrative fine to be paid by each company is equal to **10% of their turnover** during the period which the companies were found to be non-compliant.