

## Chapter 4 - Offerings of Company Securities : Part B— Requirements Concerning Offering of Securities

## Regulation 50-r52

**50. Rights offers in respect of listed securities**

*See s. 96 (1)(d)*

A rights offer in respect of listed securities, and all documents issued in connection with it, must satisfy the requirements that would apply to a prospectus in terms of sections 100 and 102 and regulation 51, each read with the changes required by the context.

**51. General requirements for a prospectus**

*See s. 100*

- (1) Every prospectus must be produced in a style that satisfies the requirements set out in section 6 (4) to (6).
- (2) As far as possible the general matter of a prospectus must be presented in narrative form, and statistical matter must be presented in tabular form.
- (3) The information required by the Act and these regulations to be stated in a prospectus must—
  - (a) be set out in print or type;
  - (b) be not less conspicuous than that in which any additional matter is printed or typed;
  - (c) be organised in accordance with the order, and use the headings, of the sub-parts and each of the regulations comprising Part C, as applicable in terms of regulation 55 or 56, as the case may be.
- (4) Every prospectus issued must—
  - (a) state on its face that it is a copy of a registered prospectus; and
  - (b) specify or refer to statements included in it specifying any documents required by the Act or this Chapter to be endorsed on or attached to or to accompany the prospectus when it is filed.

**52. Signing, date and date of issue, of prospectus**

- (1) A prospectus in respect of an offer for the subscription of shares of a company must be signed by every person named in it as a director of the company or by an agent authorised in writing by a director to sign on behalf of that director.
- (2) A prospectus in respect of any other offer must be signed by every person making the offer, or by an agent authorised by any such person in writing to sign on behalf of that person.
- (3) If a prospectus has been signed on behalf of a juristic person, every director of that juristic person is deemed to have authorised the issue of the prospectus irrespective of whether that director signed it, unless it is proven that it was issued without the director's knowledge, authority or consent.

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- (4) Every signature to a prospectus must be dated.
  - (5) The date of the prospectus is the date on which it is registered, or the later date, if any, expressly stated on the first page of the prospectus.

### **53. Access to supporting documents**

The original, or a certified copy, of each of the following documents relating to the company, and any subsidiary of the company, must be available for inspection at the registered office of the company from the date that a prospectus is issued by or on behalf of that company, until at least 10 business days after the closing date set out in the prospectus in terms of regulation 71:

- (a) The Memorandum of Incorporation;
- (b) All material contracts referred to in regulation 63, and any other agreement referred to in this Chapter, if the agreement is written;
- (c) A memorandum giving full particulars of any unwritten agreement contemplated in paragraph (b);
- (d) The written consents required by section 102; and
- (e) The relevant power of attorney documents, or resolutions authorising the signing of the prospectus, if all the directors have not signed the prospectus.

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### **Part C— Items required to be included in a Prospectus**

#### **54. General statement of required information**

- (1) Every prospectus must include—
  - (a) all material information relating to the securities being offered including, but not limited to, the information specifically required in this Part; and
  - (b) a narrative statement setting out—
    - (i) the extent to which, and manner in which, the company has applied the principles of the King Report and Code; and
    - (ii) the reasons for any instance of not applying the recommended principles in the King Report and Code.
- (2) If it is the intention to acquire a business undertaking or property with the capital raised by the offering, the prospectus must include a brief history of that business undertaking or property, including—
  - (a) particulars of each business undertaking or property purchased or acquired, or proposed to be purchased or acquired by the company or any subsidiary of the company, if any part of the purchase price of that business undertaking or property is to be defrayed out of the proceeds of the issue;
  - (b) the amount, if any, paid or payable in cash or securities for any such business undertaking or property, specifying the amount, if any, paid for goodwill;
  - (c) the name and address of the vendor of the business undertaking or property; and
  - (d) if there is more than one vendor, the amount payable in cash or securities to each vendor.
- (3) If the offer is not being underwritten, the prospectus must either—
  - (a) include a statement by the directors setting out the manner in which, and the sources from which, any shortfall in the amount proposed to be raised by means of the offer is to be financed; or
  - (b) state that the offer is conditional on the raising of the specified minimum amount.

#### **55. Specific matters to be addressed in a prospectus for a limited offer**

If a prospectus—

- (a) offers unlisted securities of a company that are in all respects uniform with previously issued securities of the same company; and

- (b) sets out an offer that is being made only to existing holders of that company's securities, irrespective of whether the offer includes a right to renounce in favour of other persons,

the prospectus must include all of the material information concerning the offer, set out in separate sections and paragraphs, in the following order:

**Section 1 — Information about the company whose securities are being offered**

A separate enumerated paragraph for each topic described in regulations 57 to 64, to the extent that the regulation applies to the offer, using the relevant regulation heading as the paragraph title.

**Section 2 — Information about the offered securities**

A separate enumerated paragraph for each topic described in regulations 70 to 72, to the extent the regulation is applicable to the offer, using the relevant regulation heading as the paragraph title.

**Section 3 — Statements and Reports relating to the offer**

A separate enumerated paragraph for each topic described in regulations 74 to 78, to the extent that the regulation is applicable to the offer, using the relevant regulation heading as the paragraph title.

**Section 4 — Additional material information**

Separate enumerated paragraphs as required to address any material information relating to the offer, not contemplated in sections 1, 2 or 3 above.

**Section 5 — Inapplicable or immaterial matters**

A list setting out those regulation numbers and headings contemplated in the outline for Sections 1, 2 or 3 above that are not applicable in the circumstances of the offer.

**56. Specific matters to be addressed in a prospectus for a general offer**

Any prospectus not contemplated in Regulation 55 must include all of the material information concerning the offer, set out in separate sections and paragraphs, in the following order:

**Section 1 — Information about the company whose securities are being offered**

A separate enumerated paragraph for each topic described in regulations 57 to 69 that is applicable to the offer, using the relevant regulation heading as the paragraph title.

**Section 2 — Information about the offered securities**

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A separate enumerated paragraph for each topic described in regulations 70 to 73 that is applicable to the offer, using the relevant regulation heading as the paragraph title

**Section 3 — Statements and Reports relating to the offer**

A separate enumerated paragraph for each topic described in regulations 74 to 80 that is applicable to the offer, using the relevant regulation heading as the paragraph title

**Section 4 — Additional material information**

Separate enumerated paragraphs as required to address any material information relating to the offer, not contemplated in sections 1, 2 or 3 above.

**Section 5 — Inapplicable or immaterial matters**

A list setting out those regulation numbers and headings contemplated in the outline for Sections 1, 2 or 3 above that are not applicable in the circumstances of the offer.

**57. Name, address and incorporation**

- (1) Section 1, Paragraph 1 of every prospectus must set out the following information with respect to the company whose securities are being offered:
  - (a) The name of the company, and its registration number;
  - (b) The address of the company's registered office, and
    - (i) the address of the company's primary place of carrying on business in the Republic, if different from its registered office; and
    - (ii) the address of the office of its transfer agent, if any; and
  - (c) The date of incorporation of the company.
- (2) If the company is a foreign company, in addition to the information required by sub-regulation (1), Section 1, Paragraph 1 of a prospectus must also set out—
  - (a) the name of the foreign jurisdiction in which it was incorporated; and
  - (b) the date—
    - (i) and registration number of the company's registration within the Republic as an external company in terms of section 23, if it carries on business within the Republic; or
    - (ii) on which the foreign company filed its Memorandum of Incorporation and list of directors, in terms of section 99 (1)(b).

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- (3) In addition to the requirements set out in sub-regulation (1), and (2) if applicable, in any prospectus contemplated in regulation 56, if the company whose securities are being offered is—
- (a) a subsidiary, the first paragraph of section 1 of the prospectus must also include—
    - (i) the name of its holding company; and
    - (ii) the address of the registered office of its holding company; or
  - (b) a holding company, the first paragraph of section 1 of the prospectus must also include, the name, date and place of incorporation of each of its subsidiaries.

**58. Directors, other office holders, or material third parties**

- (1) In this regulation, a reference to directors, proposed directors or prescribed officers of a company includes any person holding one or more material contracts to perform any executive function for the company.
- (2) Section 1, Paragraph 2 of every prospectus must set out the following information with respect to the directors, proposed directors and prescribed officers of the company whose securities are being offered:
  - (a) The names, occupations and business addresses of the directors and proposed directors of the company (specifying any who hold, or are proposed to hold, a prescribed office in the company), and prescribed officers of the company, and their nationalities, if not South African; and
  - (b) The name and business address of the company's—
    - (i) auditors;
    - (ii) attorney, banker, stockbroker, and underwriter, if any; and
    - (iii) company secretary, together with the company secretary's professional qualifications.
- (3) In addition to the requirements of sub-regulation (2), in any prospectus contemplated in regulation 56, Section (1), Paragraph 2 must also set out the following information:
  - (a) the term of office for which any director, proposed director or prescribed officer has been or is to be appointed, the manner in which, and terms on which, any proposed director will be appointed, and particulars of any right held by any person relating to the appointment of any director;
  - (b) particulars of any remuneration or proposed remuneration of the directors or proposed directors in their capacity as directors, managing directors or in any other capacity, whether or not determined by the Memorandum of Incorporation or by the company or any subsidiary;

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- (c) any borrowing powers of the company, or any subsidiary, exercisable by the directors, the manner in which any such borrowing powers may be varied, and the extent to which any such borrowing powers have been exceeded or varied, or both, during the immediately preceding three years; and
- (d) if the business of the company or any subsidiary, or any part thereof is managed or is proposed to be managed by a third party under a contract—
  - (i) the name and business address (or the address of its registered office, if a juristic person) of the third party;
  - (ii) a description of the business so managed or to be managed; and
  - (iii) a summary statement of the basis on which that person will be compensated by the company for performing those services.

**59. History, state of affairs and prospects of company**

- (1) In this regulation, “material” has the meaning set out in section 1, having particular regard to a company’s history of profits or losses, or assets employed or to be employed.
- (2) Section 1, Paragraph 3 of every prospectus—
  - (a) contemplated in regulation 55 must set out a general description of the business carried on or to be carried on by the company and any material subsidiary and, if the company or any such subsidiary carries on or proposes to carry on more than one material business, information as to the relative importance of each such business, but only to the extent that there has been a material change in the nature of the company’s activities since it last issued an annual financial statement; or
  - (b) contemplated in regulation 56 must set out a general description of the business carried on or to be carried on by the company and any material subsidiary and, if the company or any such subsidiary carries on or proposes to carry on more than one material business, information as to the relative importance of each such business.
- (3) In addition to the requirements of sub-regulation (2)(b), Section 1, Paragraph 3 of every prospectus contemplated in regulation 56 must also set out the following information with respect to the company whose securities are being offered:
  - (a) The general history of the company and any material subsidiary stating, among other things—
    - (i) the length of time during which the business of the company, and of any such subsidiary, has been carried on; and
    - (ii) the date on which the company became a public company.

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- (b) Details of any material change in the business of the company during the past 3 years.
  - (c) The opinion of the directors, stating the grounds for that opinion, as to the prospects of the business of—
    - (i) the company;
    - (ii) any subsidiary of the company; and
    - (iii) any subsidiary or business undertaking to be acquired or intended to be acquired within one year following the date of the prospectus.
  - (d) A general description giving a fair presentation of the state of affairs of—
    - (i) the company; and
    - (ii) any material subsidiary, including—
      - (aa) its issued securities, with details of the shares held by the holding company, and the the date on which it became a subsidiary; and
      - (bb) its main business.
  - (e) The situation, area and tenure of the principal immovable property held or occupied by the company and any subsidiary including, in the case of leasehold property, the rental and unexpired term of the lease.
  - (f) A statement of the estimated commitments, if any, of the company or a material subsidiary, for the purchase, construction or installation of buildings, plant or machinery, the estimated date of completion and the commencement of the operational use thereof; and
  - (g) with respect to the company particulars for each of the preceding 3 years of—
    - (i) its turnover;
    - (ii) its profits or losses before and after tax;
    - (iii) any dividends that have been paid;
    - (iv) the amount of dividends paid in cents per share; and
    - (v) the dividend cover for each year.
- (4) If the company is a holding company, the information required by sub-regulation (3)(g) must be presented either—
- (a) for the company in consolidated form; or
  - (b) separately for the company and each of its subsidiaries.



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Regulation 60-r61

## **60. Share capital of the company**

Section 1, Paragraph 4 of every prospectus must set out particulars of the company's share capital, including—

- (a) the different classes of shares, and, in respect of each such class of shares—
  - (i) the number of shares authorised, and issued;
  - (ii) a description of the respective preferential conversion and exchange rights, rights to dividends, profits or capital, including redemption rights and rights on liquidation or distribution of capital assets; and
  - (iii) the number of founders' and management or deferred shares, if any, and the special rights attaching to those shares;
- (b) brief particulars of any alteration of capital during the preceding 3 years; and
- (c) a summary of any offers of securities of the company to the public for subscription or sale during the preceding 3 years, including—
  - (i) the prices at which those securities were offered,
  - (ii) the number of securities allotted in pursuance thereof; and
  - (iii) a statement indicating whether the securities were issued to all holders of securities in proportion to their holdings and, if not, to whom issued, the reasons why the shares were not so issued and the basis of allotment.

## **61. Options or preferential rights in respect of shares**

- (1) Section 1, Paragraph 5 of every prospectus must concisely summarize the substance of any agreement or proposed agreement, as at the date of the prospectus, whereby any option or preferential right of any kind was or is proposed to be given to any person to subscribe for any shares of the company or any subsidiary of the company, giving the number and description of any such shares, including, in regard to the option or right, particulars of—
  - (a) the period during which it is exercisable;
  - (b) the price to be paid for shares subscribed for under it;
  - (c) the consideration given or to be given for it;
  - (d) the names and addresses of the persons to whom it was given, other than to existing shareholders as such or to employees under an employee share scheme;
  - (e) if given to existing shareholders as such, material particulars thereof; and
  - (f) any other material fact or circumstance concerning the granting of such option or right.

- (2) For the purpose of this regulation, “subscribing for shares” includes acquiring them from a person to whom they were allotted, or were agreed to be allotted, with a view to that person offering them for sale.

**62. Commissions paid or payable in respect of underwriting**

- (1) In this regulation, “commission” includes, but is not limited to, an amount paid or payable to any sub-underwriter who is a promoter or director or officer of the company.
- (2) Section 1, Paragraph 6 of every prospectus must state—
- (a) the amount, nature and extent of the consideration, if any, paid within the preceding two years, or payable, as commission to any person for subscribing or agreeing to subscribe, or procuring or agreeing to procure, subscriptions for any securities of the company;
  - (b) the name, occupation and business address of each person to whom any commission has been paid or is payable, as contemplated in paragraph (a);
  - (c) particulars of the amounts underwritten or sub-underwritten by each person contemplated in paragraph (a);
  - (d) the rate of the commission payable in terms of any underwriting or sub-underwriting agreement with each person contemplated in paragraph (a); and
  - (e) if a person contemplated in paragraph (a) is a company—
    - (i) the names of the directors of that company; and
    - (ii) the nature and extent of any interest, direct or indirect, in that company of any promoter, director or officer of the company in respect of which the prospectus is issued.

**63. Material contracts**

- (1) Section 1, Paragraph 7 of every prospectus must set out—
- (a) a concise list of existing contracts or proposed contracts, either written or oral, relating to the directors' and managerial remuneration, royalties, and secretarial and technical fees payable by the company or any subsidiary of the company; and
  - (b) the date and nature of, and the parties to, every other material agreement entered into by the company, or any subsidiary of the company, within the two years immediately before the date of the prospectus, subject to sub-regulation (2).
- (2) For the purposes of sub-regulation (1)(b), an agreement is not material if it is entered into in the ordinary course of the business carried on or proposed to be carried on by the company or a subsidiary, as the case may be.

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#### **64. Interest of directors and promoters**

- (1) In this regulation, the expression “director or promoter” refers to a director or promoter of a company only if its securities are being offered in a prospectus contemplated in regulation 55.
- (2) Section 1, Paragraph 8 of every prospectus must set out—
  - (a) a statement of any consideration paid, or agreed to be paid, by any person within the 3 years immediately before the date of the prospectus—
    - (i) to a director or a related person, or
    - (ii) to another company—
      - (aa) in which the director is beneficially interested; or
      - (bb) of which the director is also a director; or
    - (iii) to any partnership, syndicate or other association of which the director is a member  
to induce the director to become a director, or to qualify as a director, or for services rendered by the director or by a company, partnership, syndicate or other association in connection with the promotion or formation of the company; and
  - (b) full particulars of the nature and extent of any direct or indirect material interest, of any director or promoter in—
    - (i) the promotion of the company;
    - (ii) any property proposed to be acquired by the company out of the proceeds of the issue; or
    - (iii) any property acquired or proposed to be acquired by the company or any subsidiary during the 3 years immediately before the date of the prospectus; and
  - (c) if any interest of a director or promoter contemplated above consists in being a member of a partnership, company, syndicate or other association of persons—
    - (i) the nature and extent of the interest of each such partnership, company, syndicate or other association; and
    - (ii) the nature and extent of each such director's or promoter's interest in the partnership, company, syndicate or other association.

#### **65. Loans**

- (1) In this regulation, “loan” includes a debenture.

- (2) Section 1, Paragraph 9 of a prospectus contemplated in regulation 56 must set out—
- (a) the details of material loans to the company, or to any subsidiary of the company, at the date of the prospectus, stating with respect to each such loan—
    - (i) whether it is secured or unsecured, and if secured, the details of the security;
    - (ii) the names of the lenders, if not debenture-holders;
    - (iii) the amount, terms and conditions of repayment; and
    - (iv) the interest rate; and
  - (b) details of any material loan advanced other than in the ordinary course of business, by the company, or by any subsidiary of the company, and outstanding at the date of the prospectus, stating with respect to each such loan—
    - (i) the date it was advanced, and the period for which it was advanced;
    - (ii) the person to whom it was advanced;
    - (iii) the interest rate;
    - (iv) if the interest is in arrears, the last date on which it was paid and the extent of the arrears;
    - (v) details of any security held, including the value of that security and the method of valuation;
    - (vi) if the loan is unsecured, the reasons therefore; and
    - (vii) if the loan was advanced to another company, the names and addresses of the directors of that company.

**66. Shares issued or to be issued otherwise than for cash**

Section 1, Paragraph 10 of a prospectus contemplated in regulation 56 must state—

- (a) the number, if any, of securities that were issued or agreed to be issued by the company, or a subsidiary of the company, within the 3 years immediately before the prospectus date, to any person other than for cash; and
- (b) the consideration for which those securities were issued or were agreed to be issued.

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#### **67. Property acquired or to be acquired**

- (1) In this regulation, “property” means immovable property or any other fixed asset that—
  - (a) is material to a company’s business, and
  - (b) the purchase price of which—
    - (i) is to be defrayed in whole or in part out of the proceeds of the issue; or
    - (ii) is to be, or was within the preceding 3 years, paid in whole or in part—
      - (aa) by the issue of securities of the company or any subsidiary; or
      - (bb) out of the funds of the company or its subsidiary, whether in cash or securities; or
  - (c) the purchase or acquisition of which has not been completed at the date of the prospectus, and the nature of the title or interest therein acquired or to be acquired by the company or any subsidiary
- (2) Section 1, Paragraph 11 of a prospectus contemplated in regulation 56 must set out particulars of—
  - (a) any property purchased or acquired by the company, or a subsidiary of the company, or proposed to be purchased or acquired;
  - (b) the consideration given, or to be given, for the acquisition of any such property, specifying the value payable for goodwill, if any;
  - (c) the names and addresses of the vendors and the consideration received or to be received by each;
  - (d) brief particulars of any transaction relating to the property completed within the preceding 3 years in which any vendor of the property to the company or any subsidiary or any person who is or was at the time of the transaction a promoter or a director or proposed director of the company had any interest, direct or indirect; and
  - (e) particulars of the price at which any property that is immovable, or an option over immovable property, was purchased or sold within 3 years immediately before the date of the prospectus, if any promoter or director had any interest, directly or indirectly, in a transaction, or any promoter or director was a member of a partnership, syndicate or other association of persons that had such an interest, with the dates of any such purchases and sales and the names of any such promoter or director, and the nature and extent of that interest.
- (3) In applying this regulation—
  - (a) if any vendor is a partnership, each member of the partnership is not to be regarded as a separate vendor; and

- (b) for the purposes of sub-regulation (2)(e), shares of a company, the major asset of which is immovable property, must be regarded as being immovable property.

**68. Amounts paid or payable to promoters**

Section 1, Paragraph 12 of a prospectus contemplated in regulation 56 must state the amount, if any, paid within the preceding 3 years, or proposed to be paid, to any promoter, or to any partnership, syndicate or other association of which that promoter is or was a member, and the consideration for that payment, and any other benefit given to the promoter, partnership, syndicate or other association within the same period or proposed to be given, and the consideration for the giving of that benefit, and the promoter's name and address.

**69. Preliminary expenses and issue expenses**

Section 1, Paragraph 13 of a prospectus contemplated in regulation 56 must state—

- (a) the amount or estimated amount of any preliminary expenses incurred within 3 years before the date of the prospectus;
- (b) the persons to whom any of the expenses referred to in paragraph (a) were paid or are payable;
- (c) the amount or estimated amount of the expenses of the issue; and
- (d) the persons to whom any of the expenses referred to in paragraph (c) were paid or are payable.

**70. Purpose of the offer**

Section 2, Paragraph 1 of every prospectus must set out—

- (a) a statement of the purpose of the offer, giving reasons why it is considered necessary for the company to raise the amount sought under the prospectus; and
- (b) if the amount sought under the prospectus is more than the amount of the minimum subscription referred to in regulation 73, the reasons for the difference between those amounts.

**71. Time and date of the opening and of the closing of the offer**

Section 2, Paragraph 2 of every prospectus must state a time and date of the opening and the closing of the offer.

**72. Particulars of the offer**

- (1) Section 2, Paragraph 3 of every prospectus must set out the particulars of the securities offered, including—

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- (a) the class of securities;
  - (b) the number of securities offered;
  - (c) the issue price;
  - (d) if any securities are secured, particulars of the security, specifying the property comprising the security and the nature of the title to the property; and
  - (e) other conditions of the offer.
- (2) If, during the 3 years immediately preceding the date of the prospectus, the company issued any securities, a prospectus must also include a statement setting out—
- (a) the dates of issue of those securities;
  - (b) the price at which they were issued; and
  - (c) the reasons for any differentiation between those prices and the issue price of the securities being offered by the prospectus.
- (3) If, during the 3 years immediately preceding the effective date, the company issued any securities for a premium, the prospectus must include a statement setting out—
- (a) the dates of issue of those securities;
  - (b) the reasons for any such premium;
  - (c) the reasons for any differentiation between the amounts of any such premium; and
  - (d) how any such premium was dealt with.

**73. Minimum subscription**

- (1) Section 2, Paragraph 4 of every prospectus contemplated in regulation 56 must state the minimum subscription contemplated in section 108 (2).
- (2) In respect of any offer, the minimum subscription is the lower of—
  - (a) the full amount of the offer; or
  - (b) the amount, if any, determined by the company in terms of sub-regulation (3).
- (3) The company may determine a minimum subscription value, being the amount that, in the opinion of the directors, must be raised by the issue of securities to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums required, in respect of each of the matters listed in sub-regulation (4).
- (4) If the company has determined a minimum subscription value, as contemplated in sub-regulation (3), Section 2, Paragraph 4 of the prospectus must also set out—

- (a) the purchase price of any property purchased or to be purchased, if any part of the purchase price is to be defrayed out of the proceeds of the issue;
- (b) any preliminary expenses payable by the company, and any commission payable to any person as consideration for—
  - (i) agreeing to subscribe for any securities of the company; or
  - (ii) procuring or agreeing to procure subscriptions for any securities of the company;
- (c) the repayment of any money borrowed by the company or any subsidiary in respect of any of the foregoing matters;
- (d) the working capital, stating the specific purposes for which it is to be used and the estimated amount required for each such purpose;
- (e) any other expenditure, stating the nature and purposes thereof and the estimated amount in each case; and
- (f) the amounts, if any, to be provided in respect of the matters listed above otherwise than out of the proceeds of the issue, and the sources from which those amounts are to be provided.

#### **74. Statement as to adequacy of capital**

- (1) In this regulation, “issued capital of the company” includes the minimum amount to be raised in pursuance of the offer.
- (2) Section 3, Paragraph 1 of every prospectus must set out either—
  - (a) a statement by the directors of the company that, in their opinion, the issued capital of the company is adequate for the purposes of the business of the company, and of any subsidiary of the company, for at least 12 months after the date of the prospectus; or
  - (b) if the directors of the company are of the opinion that the issued capital of the company is inadequate for the purposes contemplated in paragraph (a), a statement by them setting out—
    - (i) the extent of the inadequacy; and
    - (ii) the manner in which, and the sources from which, the company and any subsidiary are financed, or are proposed to be financed.

#### **75. Report by directors as to material changes**

Section 3, Paragraph 2 of every prospectus must be a report by the directors of the company setting out any material change in the assets or liabilities of the company or any subsidiary that have occurred between—



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- (a) the end of the financial year of the company, or any subsidiary of the company, in respect of which it's most recent annual financial statements report; and
- (b) the date of the prospectus.

**76. Statement as to listing on stock exchange**

Section 3, Paragraph 3 of every prospectus must set out a statement as to whether or not an application has been made for a listing of the securities offered and, if so, the name of the relevant exchange.

**77. Report by auditor where business undertaking to be acquired**

If the proceeds, or any part of the proceeds, of the issue of the securities or any other funds are to be applied directly or indirectly in the purchase of any business undertaking, Section 3, Paragraph 4 of every prospectus must comprise a report made by an auditor named in the prospectus on—

- (a) the profits or losses of the business undertaking in respect of each of the 3 financial years preceding the date of the prospectus; and
- (b) the assets and liabilities of the business undertaking at the last date to which the financial statements of the business undertaking were made out.

**78. Report by auditor where company will acquire a subsidiary**

- (1) This regulation applies only if the proceeds or any part of the proceeds of the issue of the securities are to be applied in any manner, whether directly or indirectly, resulting in the acquisition by the company or its subsidiary of securities of any other juristic person, with the direct or indirect result that the other juristic person will become a subsidiary of the company.
- (2) In the circumstances contemplated in sub-regulation (1), Section 3, Paragraph 5 of every prospectus must comprise a report made by an auditor named in the prospectus on—
  - (a) the profits or losses of the other juristic person in respect of each of the 3 financial years preceding the date of the prospectus; and
  - (a) the assets and liabilities of the other juristic person at the last date to which the annual financial statements of the other juristic person were made out.
- (3) The auditor's report required by sub-regulation (2) must indicate—
  - (a) how the profits or losses of the other juristic person would, in respect of the shares to be acquired, have concerned shareholders of the company; and
  - (b) what allowance would have fallen to be made, in respect of assets and liabilities so dealt with, for holders of other shares,

if the company had at all material times held the shares to be acquired.

- (4) In addition to satisfying the requirements of sub-regulation (2), if the other juristic person has a subsidiary or, had it been a company it would have had a subsidiary, the auditor's report must also deal with the profits or losses and the assets and liabilities of the other juristic person and its subsidiary, or any other juristic person as would have been its subsidiary if it had been a company, in the manner provided by regulation 79 (3) in relation to the company and its subsidiary.

#### **79. Report by auditor of company**

- (1) Section 3, Paragraph 6 of a prospectus contemplated in regulation 56 must comprise a report by the auditor of the company with respect to—
- (a) profits or losses and assets and liabilities, in accordance with sub-regulations (2) or (3), as applicable; and
  - (b) the rates of the dividends, if any, paid by the company in respect of each class of securities of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of—
    - (i) each class of shares on which dividends were paid; and
    - (ii) the cases in which no dividends were paid in respect of a particular class of shares in respect of any of those years; and
  - (b) if no annual financial statements were made out by or for the company in respect of any part of the 3 years ending on a date 3 months before the issue of the prospectus, a statement of that fact.
- (2) If the company has no subsidiary, the report—
- (a) in regard to profits or losses, must deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and
  - (b) in regard to assets and liabilities, must deal with the assets and liabilities of the company at the last date to which the annual financial statements of the company were made out.
- (3) If the company is a holding company, the report—
- (a) in regard to profits or losses, must deal separately with the company's profits or losses as provided by sub-regulation (2), and in addition, must deal—
    - (i) as a whole with the combined profits or losses of all subsidiaries, as far as they concern holders of the company's securities; or
    - (ii) individually with the profits or losses of each subsidiary, so far as they concern holders of the company's securities; or

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- (iii) as a whole with the consolidated profits or losses of the group of companies so far as concerns holders of the company's securities; and
  - (b) in regard to assets and liabilities, must deal separately with the company's assets and liabilities as provided by sub-regulation (2) and, in addition, must deal—
    - (i) as a whole with the combined assets and liabilities of all subsidiaries, indicating the interest therein of holders of the company's securities, other than the company; or
    - (ii) individually with the assets and liabilities of each subsidiary, indicating the interests therein of shareholders other than the company; or
    - (iii) as a whole with the consolidated assets and liabilities of the company and all subsidiaries, indicating the interests therein of shareholders other than the company;
  - (c) if a subsidiary incurred losses, must state the amounts of those losses and the manner in which provision was made for them.
- (4) The auditor must include a statement in the report noting—
  - (a) the extent to which the auditor is satisfied that the financial statements in relation to the company and any subsidiary are correct and have been prepared on a basis consistent with the Act; and
  - (b) whether—
    - (i) the debtors and creditors include any accounts other than trade accounts;
    - (ii) the provisions for doubtful debts appear to be adequate;
    - (iii) adequate provision has been made for obsolete, damaged or defective goods, and for supplies purchased at prices in excess of current market prices;
    - (iv) intercompany profits in the group have been eliminated; or
    - (v) there have been any material changes in the assets and liabilities of the company or of any subsidiary since the date of the last annual financial statements.

**80. Requirements for prospectus of mining company**

- (1) This regulation applies only to a prospectus contemplated in regulation 56, and then only if the prospectus offers securities—
  - (a) issued or to be issued by a mining company; or
  - (b) to raise capital in order to directly or indirectly acquire a mining company or its securities or business.

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- (2) In this regulation, “**mining company**” includes a company that carries on or proposes to carry on mining, development or prospecting for or exploitation of any mineral resources, or that acquires or proposes to acquire any mineral rights thereto or options thereon.
- (3) Section 3 of a prospectus contemplated in sub-regulation (1) must include, or have appended to it, the following additional items:
- (a) a report by an expert containing information appropriate to the subject matter of the prospectus and including with respect to each mining company or asset, as applicable—
- (i) a statement describing briefly the geological characteristics of the occurrence;
  - (ii) details of previous mining operations and production relevant to the workability and payability of the proposed mining operations;
  - (iii) survey, drilling and borehole results;
  - (iv) ore reserves, and reserves; and
  - (i) an interpretation of the information available with reference to the viability of the project.
- (b) any material information not otherwise required by Part B or this Part of this Chapter relating to the mineral rights, or any other right to mine, mining title, including any Government mining lease, and immovable property available for the mine, including with respect to each mining company or asset, as applicable—
- (i) whether the aforesaid is owned by the company, or in process of transfer or is under option or lease;
  - (ii) the name of the farm on and district in which each is situated;
  - (iii) the area of each;
  - (iv) the aggregate price or other consideration for which they were or are to be acquired;
  - (v) relevant details of any option as aforesaid; and
- (c) a statement by the directors of the plans, with respect to each mining company or asset, for reaching the production stage or for increasing output, including information regarding—
- (i) shaft sinking and development;
  - (ii) capital expenditure for each material stage of development.