

# **THE AUDITOR'S REPORTING RESPONSIBILITIES IN TERMS OF SECTION 8.64 OF THE JSE SECURITIES EXCHANGE SOUTH AFRICA LISTINGS REQUIREMENTS**

## **Introduction**

The revision to the JSE Securities Exchange South Africa Listings Requirements (the Listings Requirements) regarding the auditors reporting responsibilities as set out in section 8.64 thereof, came into effect for years ending on or after 31 December 2003. Section 8.64 requires the auditor to modify the audit report as considered appropriate in instances of non-compliance with any of the disclosure requirements set out in section 8.63 (b) to (l) of the Listings Requirements. Section 8.64 does not require the auditor to express positive assurance on compliance with the Listings Requirements. .01

## **Extract from the JSE Securities Exchange South Africa Listings Requirements**

8.63 In addition to complying with GAAP, Schedule 4 of the Act and paragraph 3.84 of the Listings Requirements, issuers are required to disclose information in the annual report (in the case of 8.63(a)) and in the annual financial statements (in the case of 8.63 (b)-(l)): .02

- (a) the King Code:
  - (i) a narrative statement of how it has applied the principles set out in the King Code, providing explanation(s) that enable(s) its shareholders to evaluate how the principles have been applied; and
  - (ii) a statement addressing the extent of the company's compliance with the King Code and the reasons for non-compliance with any of the principles in the King Code, specifying whether or not the company has complied throughout the accounting period with all the

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provisions of the King Code, and indicating for what part of the period any non-compliance occurred;

(b) borrowings:

- (i) full disclosure must be made of all borrowings. Where, during the period under review, a listed company or any of its subsidiaries incurs a material increase in its borrowings, it must disclose the nature of and purpose for such borrowings; and
- (ii) as a note, disclosure must be made of the level of borrowings in relation to those borrowings authorised by the articles of association of the listed company and its subsidiaries;

(c) headline earnings per share:

in respect of each current financial year and the immediately preceding financial year, a headline earnings per share figure must be disclosed, as well as an itemised reconciliation between headline earnings and the earnings used in the calculation of earnings per share. Headline earnings per share must be calculated in terms of Circular 7/2002, Headline Earnings issued by SAICA;

(d) disclosure of directors' interests:

- (i) the aggregate of the direct and indirect interests of the directors in, and the direct and indirect interest of each director's holding in the share capital of the listed company distinguishing between beneficial and non beneficial interests. The statement should include by way of a note any change in those interests occurring between the end of the financial year and a date not more than one month prior to the date of the notice of the annual general meeting or, if there has been no such change, disclosure of that fact; and
- (ii) comparative figures for the previous year must be presented;

- (e) shareholder spread:
  - (i) the number of public shareholders for every class of listed securities must be disclosed;
  - (ii) the percentages of each class of listed security that is held by public and non-public shareholders must be disclosed; and
  - (iii) the disclosure for non-public shareholders must be analysed in accordance with the categories set out in paragraph 4.25;
- (f) major shareholders:

the interest of any shareholder other than a director who, in so far as it is known, is directly or indirectly beneficially interested in 5% or more of any class of the listed company's capital, together with the amount of each such shareholder's interest, or if there are no such shareholders, an appropriate negative statement;
- (g) share incentive schemes:

the listed company must, in respect of its or its subsidiary companies' share incentive schemes, summarise the details and terms of options in issue at the beginning of the financial period, cancelled or issued during the financial period and in issue at the end of the financial period, the number of securities that may be utilised for purposes of the scheme at the beginning of the financial period, changes in such number during the financial period and the number of securities available for utilisation for purposes of the scheme at the end of the financial period;
- (h) profit forecasts:

if the results for the period under review differ by 10% or more from any published forecast or estimate by the company for that period, an explanation of the difference must be given;

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- (i) unlisted securities:  
if applicable, a statement in accordance with paragraph 4.23 (b) must be made;
- (j) special resolutions:  
full details must be given of all special resolutions passed by the issuer's subsidiaries since the date of the previous directors' report relating to capital structure, borrowing powers, the object clause contained in the memorandum of association or any other material matter that affects the understanding of the company and its subsidiaries;
- (k) issues for cash:  
details must be given of all issues of securities for cash during the period under review, distinguishing between general and specific issues, and including, at least, the number of securities issued, the price at which and, in the event of a specific issue to non-public shareholders as defined in paragraph 4.25, to whom they were issued; and
- (l) disclosure of individual director's emoluments:  
an analysis in aggregate and by director, of emoluments paid during the last financial period by the company, or receivable by directors, in their capacity as director, or in any other capacity, whether determined by the articles or not, distinguishing separately between executive and non-executive directors;
  - (i) fees for services as a director;
  - (ii) management, consulting, technical or other fees paid for such services rendered, directly or indirectly, including payments to management companies, a part of which is then paid to a director of the company;
  - (iii) basic salary;
  - (iv) bonuses and performance-related payments;
  - (v) sums paid by way of expense allowance;
  - (vi) any other material benefits received;
  - (vii) contributions paid under any pension scheme;

- (viii) any commission, gain or profit-sharing arrangements;  
and
- (ix) in respect of share options or any other right given which has had the same or a similar effect in respect of providing a right to subscribe for shares (“share options”):
  - (1) the opening balance of share options, including the number of share options at each different strike price;
  - (2) the number of share options awarded and their strike prices;
  - (3) the strike dates of differing lots of options awarded;
  - (4) the number of share options exercised and at what prices;
  - (5) the closing balance of share options, including the number of share options at each different strike price;(1) to (5) above may be presented in tabular form;
- (x) any shares issued and allotted in terms of a share purchase/option scheme for employees (or other scheme/structure effected outside of the issuer which achieves substantially the same objectives as a share purchase/option scheme), usually held as a pledge against an outstanding loan to an employee in a share purchase scheme trust, which have not been fully paid for, including the number so issued and allotted, the price of issue and allotment, the release periods applicable to such shares and any other relevant information;
- (xi) without derogating from the generality of 8.63 (l) (i) to (x) above, the directors emoluments disclosed in accordance with 8.63 (l) (i) to (x) above must include disclosure of all emoluments received or receivable from the following entities:
  - (1) the issuer’s holding company;

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- (2) the issuer's subsidiaries and fellow subsidiaries;
- (3) associates of 8.63 (l) (xi) (1) and (2) above;
- (4) joint ventures of the issuer or of 8.63 (l) (xi) (1) to (3) above; and
- (5) entities that provide management or advisory services to the company or any of 8.63 (l) (xi) (1) to (4) above.

8.64 The issuer's auditor shall modify the auditors report as considered appropriate in cases of non-compliance with any of the disclosure requirements set out in paragraphs 8.63 (b) to (l).

**Reporting responsibilities of auditors**

- .03 Where a client fails to make these disclosures, the auditor should consider the impact on the audit report. An emphasis of matter paragraph should be included in the audit report. Provided below is an example of suggested wording that could be used in the case of such non-compliance.

**Non-compliance with section 8.64 of the JSE Securities Exchange South Africa Listings Requirements**

- .04 "Without qualifying our opinion above, we are required in terms of section 8.64 of the JSE Securities Exchange South Africa Listings Requirements (the Listings Requirements) to draw your attention to the fact that ... has not disclosed individual director's emoluments in accordance with the requirements of section 8.63(1) of the Listings Requirements."

**Johannesburg  
March 2004**

**I Schoole  
Executive President**