

Circular No. 3

June 2011

## THE NEW COMPANIES ACT AND THE PUBLIC INTEREST SCORE

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The Companies Act No. 71 of 2008 (**New Companies Act**) commenced on 1 May 2011, and introduced the concept of the public interest score of a company. This is an important new development, as it will be crucial in determining the financial reporting standards that the company must adopt (these provisions apply equally to close corporations). The public interest score of a company will also determine whether the company is required to appoint a social and ethics committee.

This circular sets out how the public interest score is calculated. More detailed information can be found in our Companies Act Circular Number 1, dated April 2011.

## CALCULATION OF THE PUBLIC INTEREST SCORE

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Each company must calculate its public interest score at the end of each financial year. The score is calculated by points being awarded for:

- employees
- third party liability
- turnover; and
- individuals associated with or having beneficial interest in the company

## CALCULATING POINTS

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### Points for employees

The number of points allocated for employees equals the average number of employees of the company during the financial year.

### Points for Third Party Liability

One point is allocated for every R 1 million (or part thereof) in third party liability of the company at the financial year end.

### Points for turnover

One point is allocated for every R 1 million (or part thereof) in turnover during the financial year.

### Points for individuals

- Profit Companies:

One point is allocated for every individual who, at the end of the financial year, is known by the company to have a beneficial interest in any of the company's issued securities. This is broad enough to include a right to receive or participate in any distribution in respect of a company's securities. For example the beneficiaries of an employee trust holding shares in a company will be regarded as having a "beneficial interest" in the securities of that company. In the same way, if a community trust in which 3000 individuals have a beneficial interest is a shareholder in a company, this will equate to 3000 public interest points. A "beneficial interest" does not include an interest held by a person in a unit trust or collective investment scheme.

- Non-Profit Companies:

One point is allocated for every individual who, at the end of the financial year, is known by the company to be a member of the company, or a member of an association that is a member of the company.

## **EFFECT OF PUBLIC INTEREST SCORE ON FINANCIAL REPORTING**

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A company with a public interest score of **350** or more points in a financial year, must have its annual financial statements for that financial year audited.

A company with a public interest score of between 100 and 349 points (both inclusive), must have its annual financial statements audited only if they were internally compiled. In terms of the Regulations, annual financial statements are "internally compiled" unless they are prepared by an independent accounting professional on the basis of financial records provided by the company in question, and in accordance with relevant financial reporting standards.

More detailed information on accounting requirements and financial statements can be found in Companies Act Circular Number 1, dated April 2011.

## **SOCIAL AND ETHICS COMMITTEES**

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Every state owned company and listed public company is obliged to appoint a social and ethics committee. Any other company which, in any two of the previous five financial years, has attained a public interest score of

over 500 points, is also obliged to appoint a social and ethics committee. More detailed information about Social and Ethics Committees can be found in Companies Act Circular Number 1, dated April 2011.

## **FURTHER ADVICE**

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Should you require advice or assistance on public interest scores or the New Companies Act, please contact Michael Jackson (031 – 536 8512 [mjackson@coxyeats.co.za](mailto:mjackson@coxyeats.co.za)); Keren Oliver (031 - 536 8518 [koliver@coxyeats.co.za](mailto:koliver@coxyeats.co.za)); Themba Zikhali (031 – 536 8529 [tzikhali@coxyeats.co.za](mailto:tzikhali@coxyeats.co.za)); or Carol McDonald (031 – 536 8529 [cmcdonald@coxyeats.co.za](mailto:cmcdonald@coxyeats.co.za)).

