

Circular No. 7

April 2013

THE NEW COMPANIES ACT : ACCESS TO COMPANY INFORMATION

The right to information that is held by another person¹ and that is required for the exercise or protection of any rights is a right that is enshrined in the Bill of Rights². The Companies Act No. 71 of 2008 (the **Act**) contains provisions which aim to further this constitutional right and to promote transparency, accountability and integrity in companies. This note sets out which company information must be made available to certain persons, who those persons are in terms of the Act and the procedures for obtaining the information.

RECORDS TO BE KEPT AT REGISTERED OFFICES

In terms of the Act, each company registered in South Africa must keep the following:

- a copy of its Memorandum of Incorporation (**Mol**);
- any amendments to the Mol and any company rules;
- a detailed record of its current and past directors;
- copies of all:
 - reports presented at an Annual General Meeting (**AGM**);
 - Annual Financial Statements (**AFS**) required in terms of the Act;
 - accounting records required in terms of the Act;
- notices and minutes of all shareholders meetings, including:
 - all resolutions adopted by them;
 - any document that was made available by the company to the shareholders in relation to each resolution;
- copies of any written communications sent generally by the company to all holders of any class of the company's securities;

¹ 'Person' includes a juristic person such as a company

² The Bill of Rights are the rights enjoyed by all persons within the Republic as provided for in Chapter 2 of the Constitution of the Republic of South Africa, 1996

- minutes of all meetings and resolutions of directors, directors committees and the audit committee;
- a securities register or members' register as applicable;
- records in regard to the appointment of the company secretary, auditor or audit committee, if applicable.

These records must be kept in writing or in a format that can be reduced to writing for a period of seven years, at the company's registered office. Companies are required to file a notice³ setting out the location at which the records described above are kept, if not at the company's registered office.

ACCESS RIGHTS OF SECURITIES HOLDERS

Any person who is a holder of or has a beneficial interest in securities issued by a profit company, or is a member of a non-profit company, has the right to inspect and copy⁴ the information in the following:

- the company's Mol or any company rules;
- records in respect of directors;
- reports to AGMs and the AFS;
- notices and minutes of shareholder meetings, including all resolutions adopted and all documents made available to the shareholders at those meetings;
- communications sent generally by the company to all shareholders of any class of shares; and
- the securities register or members' register as applicable.

A person has a beneficial interest in securities if they have the right to receive or participate in any distribution in respect of those securities or to exercise rights attaching to those securities or to dispose of or direct the disposition of those securities or a distribution in respect of those securities.

A person who falls into this category of persons is further entitled to:

1. without demand, receive a notice of publication of the AFS of the company and the steps they are required to take in order to obtain copies of the AFS; and
2. on demand receive one free copy of the AFS of the company.

³ Form CoR 22

⁴ The company may charge not more than the maximum prescribed fee for such copying.



ACCESS RIGHTS OF OTHER PERSONS

Any person who is not a holder of or does not have a beneficial interest in securities may inspect or copy:

- the securities register or members register of a profit company or non-profit company, as the case may be; and
- the register of directors of a company,

upon payment of a fee which is yet to be determined by Regulation, but which has been capped at R100,00.

Any judgment creditor, after being informed by the relevant sheriff who is attending to execution of a company's property, that there is insufficient disposable property to satisfy a judgment debt, is entitled to demand access to the most recent AFS of that company and to receive such AFS without charge within 5 (five) business days of making the demand.

FORMALITIES

A person seeking to invoke the rights in terms of the Act must make a formal request for a company's information by delivering a Form CoR 24 to the company. In practice, the form will be completed and hand delivered to the registered office of the company. It is prudent to have the registered office acknowledge receipt of the form.

The company must then comply with the request within 14 (fourteen) days of delivery of the form, provided the request is valid in terms of the Act.

The inspection or copying of the records, as the case may be, must take place during business hours and for a reasonable period.

OFFENCES

It is an offence for a company to:

- fail to accommodate any reasonable request for access, or to unreasonably refuse access, to any record that a person has a right to inspect or copy as set out above; or



- to otherwise impede, interfere with, or attempt to frustrate the reasonable exercise by any person of the rights set out above.

Any person convicted of an offence in terms of the provisions relating to access to company records, is liable to a fine or imprisonment for a period not exceeding twelve months, or both a fine and imprisonment.

FURTHER ADVICE

Should you require advice or assistance on the Companies Act, please contact any member of the commercial team at Cox Yeats: Michael Jackson (031 – 536 8512 mjackson@coxyeats.co.za), Themba Zikhali (031 – 536 8529 tzikhali@coxyeats.co.za), Keren Oliver (031 - 536 8518 koliver@coxyeats.co.za), Simon Watson (031 536-8530 swatson@coxyeats.co.za) or Jason Goodison (031 – 536 8517 jgoodison@coxyeats.co.za).

