

SECTIONS OF THE COMPANIES ACT NO. 71 (2008) (AS AMENDED)

94. Audit committees.

(1) This section-

- (a) applies concurrently with [section 64](#) of the Banks Act, to any company that is subject to that section of that Act, but [subsections \(2\), \(3\) and \(4\)](#) of this section do not apply to the appointment of an audit committee by any such company; and
- (b) does not apply to a company that has been granted an exemption in terms of [section 64 \(4\)](#) of the Banks Act.

(2) At each annual general meeting, a public company, state-owned company or other company that is required only by its Memorandum of Incorporation to have an audit committee as contemplated in [sections 34 \(2\) and 84 \(1\) \(c\) \(ii\)](#), must elect an audit committee comprising at least three members, unless-

- (a) the company is a subsidiary of another company that has an audit committee; and
- (b) the audit committee of that other company will perform the functions required under this section on behalf of that subsidiary company.

[[Sub-s. \(2\)](#) amended by s. 57 (a) of [Act No. 3 of 2011](#).]

(3) The first members of the audit committee may be appointed by-

- (a) the incorporators of a company; or
- (b) by the board, within 40 business days after the incorporation of the company.

(4) Each member of an audit committee of a company must-

(a) be a director of the company, who satisfies any applicable requirements prescribed in terms of [subsection \(5\)](#);

(b) not be-

- (i) involved in the day-to-day management of the company's business or have been so involved at any time during the previous financial year;
- (ii) a prescribed officer, or full-time employee, of the company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
- (iii) a material supplier or customer of the company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and

(c) not be related to any person who falls within any of the criteria set out in

[paragraph \(b\)](#).

(5) The Minister may prescribe minimum qualification requirements for members of an audit committee as necessary to ensure that any such committee, taken as a whole, comprises persons with adequate relevant knowledge and experience to equip the committee to perform its functions.

(6) The board of a company contemplated in [section 84 \(1\)](#) must appoint a person to fill any vacancy on the audit committee within 40 business days after the vacancy arises.

(7) An audit committee of a company has the following duties-

- (a) to nominate, for appointment as auditor of the company under [section 90](#), a registered auditor who, in the opinion of the audit committee, is independent of the company;
- (b) to determine the fees to be paid to the auditor and the auditor's terms of engagement;
- (c) to ensure that the appointment of the auditor complies with the provisions of this Act and any other legislation relating to the appointment of auditors;
- (d) to determine, subject to the provisions of this Chapter, the nature and extent of any non-audit services that the auditor may provide to the company, or that the auditor must not provide to the company, or a related company;
- (e) to pre-approve any proposed agreement with the auditor for the provision of non-audit services to the company;
- (f) to prepare a report, to be included in the annual financial statements for that financial year-
 - (i) describing how the audit committee carried out its functions;
 - (ii) stating whether the audit committee is satisfied that the auditor was independent of the company; and
 - (iii) commenting in any way the committee considers appropriate on the financial statements, the accounting practices and the internal financial control of the company;
- (g) to receive and deal appropriately with any concerns or complaints, whether from within or outside the company, or on its own initiative, relating to-
 - (i) the accounting practices and internal audit of the company;
 - (ii) the content or auditing of the company's financial statements;
 - (iii) the internal financial controls of the company; or
 - (iv) any related matter;

(h) to make submissions to the board on any matter concerning the company's accounting policies, financial control, records and reporting; and

(i) to perform such other oversight functions as may be determined by the board. _____

[[Para. \(i\)](#) substituted by s. 57

(b) of [Act No. 3 of 2011](#).]

(8) In considering whether, for the purposes of this Part, a registered auditor is independent of a company, the audit committee of that company must-

(a) ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the company, except-

(i) as auditor; or

(ii) for rendering other services to the company, to the extent

permitted in terms of [subsection \(7\) \(d\)](#); [[Sub-para.](#)

[\(ii\)](#) substituted by s. 57 (c) of [Act No. 3 of 2011](#).]

(b) consider whether the auditor's independence may have been prejudiced-

(i) as a result of any previous appointment as auditor; or

(ii) having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the company; and

(c) consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the Auditing Profession Act, in relation to the company, and if the company is a member of a group of companies, any other company within that group.

(9) Nothing in this section precludes the appointment by a company at its annual general meeting of an auditor other than one nominated by the audit committee, but if such an auditor is appointed, the appointment is valid only if the audit committee is satisfied that the proposed auditor is independent of the company.

[[Sub-s. \(9\)](#) substituted by s. 57 (d) of [Act No. 3 of 2011](#).]

(10) Neither the appointment nor the duties of an audit committee reduce the functions and duties of the board or the directors of the company, except with respect to the appointment, fees and terms of engagement of the auditor.

(11) A company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.