

Chartered Secretaries Southern Africa

Good governance across the Board – Accounting with Accountability

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26 February 2010

Commentary in response to the COMPANIES REGULATIONS 2010 published by the Department of Trade and Industry pursuant to Notice 1664 of 2009.

Transmitted by email to MNetshitenzhe@thedti.gov.za on 26 February 2010.

PREAMBLE

Our comments relate mainly to two aspects of the Companies Regulations - 2010:

- A Definition of Prescribed Officer (Regulation 45)
- B Independent Reviews of Annual Financial Statements (Regulation 30)

A DEFINITION OF PRESCRIBED OFFICER

Despite the office of company secretary being a mandatory appointment pursuant to Section 86 of the new Act (71 of 2008), this specific office has not been included in the definition of "Prescribed Officer". **Chartered Secretaries Southern Africa believes that Regulation 45 should be amended to include the "company secretary" as a prescribed officer (it is assumed that this was the intention of the legislation in light of the use of the phrases "general secretary" and "general counsel", or similar office holder).**

B INDEPENDENT REVIEWS OF ANNUAL FINANCIAL STATEMENTS

1. One of the main aims of the new Act is to promote the development of the South African economy by making the formation and maintenance of a company more flexible and simple, and by doing so facilitating the formation of a private company comparable to a close corporation.
2. A significant implication of the new Act is that it precludes the registration of new close corporations after it comes into effect. Existing close corporations can continue to exist for the foreseeable future although schedule 2 of the new Act contains provisions relating

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(Reg No. 1972/000007/08 – Association Incorporated under section 21 – The Southern African Institute of Chartered Secretaries and Administrators)
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to the conversion of close corporations into companies. Presumably, the rationale for this provision was that, because the new Act now offers flexibility with regard to accounting, audit and other legal requirements, it should be able to accommodate the particular needs of private companies, in light of the fact that they are similar to close corporations in terms of the new Act.



3. Regulation 29 prescribes which companies are obliged to be audited. Effectively, most private companies will no longer be required to be audited. Accordingly, these private companies, from a financial accounting and reporting viewpoint, should be effectively governed in a manner similar to close corporations.
4. A large portion of our 2500 members in Southern Africa (holding the qualifications ACIS/FCIS) act as effective Accounting Officers/Accountants for private companies, in the sense that they prepare annual financial statements of private companies. These annual financial statements are prepared by members of Chartered Secretaries Southern Africa in terms of the applicable accounting standards as mandated by the Accounting Practices Board (APB), the body recognised as the official standard setter governing the preparation of financial statements in South Africa. Chartered Secretaries Southern Africa is a member of the APB.
5. Unfortunately, Regulation 30 precludes persons, other than members of professional bodies which are in turn members of the International Federation of Accountants (IFAC), from being recognised as an "independent accounting professional" [refer Regulation 30(3)(d)(i)]. Chartered Secretaries Southern Africa is not a member of IFAC. However Chartered Secretaries Southern Africa is a division of the international Institute of Chartered Secretaries and Administrators (ICSA) and it already pays capitation fees to ICSA in British Sterling. It is unreasonable to expect Chartered Secretaries Southern Africa to incur the burden of further foreign exchange expense in order to become a member of IFAC.
6. The fact that the provisions of Regulation 30 will preclude members of Chartered Secretaries Southern Africa from being recognised as "independent accounting professionals" for the purposes of both independent reviews and independent compilation and reporting will, in our opinion, cause a probable migration of many private company clients away from practising members of Chartered Secretaries Southern Africa who are currently only recognised as accounting officers in terms of the Close Corporations Act. This assumption stems from the rational interpretation of Regulation 30 inasmuch as the shareholders of affected private companies would be forced to engage only those "accountants" recognised as "independent accounting professionals" to conduct independent reviews or independent compilation and reporting in respect of their annual financial statements. This result is in conflict with the stated purposes of the new Act, Section 7(b) and 7(f); "to create flexibility and simplicity in the formation and maintenance of companies and encourage active participation in economic organisation".



7. Chartered Secretaries Southern Africa believes that the proposed Regulation 30 creates complicated, arbitrary and inappropriate discriminatory restrictions in regard to the annual financial statements of private companies which should, in terms of their new “non-audit” regime anticipated pursuant to the new Act, be presumed to be similar to close corporations.

This policy was clearly enunciated by the Department of Trade and Industry in August 2009:

“The clear implication of s.30 (2) (b) read with s. 30 (7) (b) is that an independent review is not just another name for an audit, but is in fact something less: less rigorous, less burdensome, less onerous, and less costly to the company, and is contemplated to be performed by persons other than auditors”. (South African Department of Trade and Industry, 2009. The Companies Act, 2008, Development of Regulations, Issues for Discussion, August 2009)

8. In this regard it is instructive to refer to the definition contained in Section 41(3) (a) of the Auditing Profession Act No 26 of 2005 which states: “Nothing in this section prohibits any person from using the description (...) accountant”.
9. There can be no denying that the function of independent review providers is similar to that of accounting officers. Accordingly, the current role and function of accountants (as opposed to auditors), acting in their capacity as accounting officers, should be the basis for conducting independent reviews/independent compilation and reporting.
10. There is no justification for the view that preparers of annual financial statements, acting under an engagement to conduct either an independent review or an independent compilation and reporting assignment, and already recognised as Accounting Officers in terms of existing close corporations legislation (which is presumably intended to be aligned with the new Companies Act requirements pertaining to non-auditable private companies), are required to be members of IFAC as a prerequisite qualification for preparing annual financial statements in terms of the abovementioned assignments.
11. As recently as 13 November 2008 the DTI, via CIPRO, published a notice updating of the list of recognised accounting professions to act as accounting officers for close corporations. This list included Chartered Secretaries Southern Africa as well as other professional bodies, only some of which are members of IFAC.

12. Chartered Secretaries Southern Africa also believes that it is inappropriate, in the context of the Companies Act 71 of 2008 (South African legislation) for Regulation 30 to prescribe as a qualification (as required by Section 30 (7) (b)), the membership of a non-South African professional body i.e. IFAC, in order to be regarded as an independent accounting professional. South African Accounting Standards are set by the APB, of which Chartered Secretaries Southern Africa has been a member since 1976. Furthermore, an “accountant” is not obliged to be a member of IFAC in order to implement the requirements of ISRE 2400 or ISRS 4400.
13. An unintended consequence of the requirement that only members of professional bodies which are members of IFAC, are to be regarded as independent accounting professionals, is that the exclusion of Chartered Secretaries Southern Africa and certain other professional bodies may be contrary to the provisions of Section 4 of the Competition Act 89 of 1998, because the terms thereof could be construed as being a prohibited restrictive horizontal practice of dividing markets i.e. the service encompassing the preparation of annual financial statements in respect of private companies, by allocating specific types of goods or services (independent reviews and independent compilation and reporting of annual financial statements). The requirement that only persons who are members of professional bodies which are members of IFAC are to be recognized as independent accounting professionals will preclude persons who are members of professional bodies which are not members of IFAC, from conducting independent reviews/independent compilation and reporting in terms of Regulation 30. This exclusion amounts to “dividing markets”.
14. It is understood that the draft Regulations were developed after consultations during August 2009 between the DTI and invited stakeholders, only certain of which were members of the APB and professional bodies recognized as Accounting Officers in terms of the Close Corporations Act. For some unknown reason, Chartered Secretaries Southern Africa was not invited to participate despite being serious, credible stakeholders in relation to company secretarial/governance matters, as well as being a member of the APB and whose members are recognized as qualified to act as Accounting Officers in terms of the Close Corporations Act and other legislation/regulation.

Chartered Secretaries Southern Africa and its UK parent ICSA International are not members of IFAC; however, our members are recognised as accounting officers in terms of the Close Corporations Act together with the qualifications of certain who are members of bodies which are members of IFAC. There is no basis for the Regulations to discriminate unfairly against the CIS qualification purely based on membership of IFAC, the latter having no bearing on qualification.



15. The academic syllabus of Chartered Secretaries Southern Africa, which leads to the qualifications ACIS/FCIS, is directly comparable (in terms of accounting content) to those of professional institutes which are members of IFAC, viz. NQF7. We attach as Appendix A, a schedule indicating the comparison of qualifications of Chartered Secretaries Southern Africa with other professional bodies which are members of IFAC.
16. **In light of the above it is unreasonable to exclude members of Chartered Secretaries Southern Africa from being recognised as independent accounting professionals in terms of the new Act, simply on the basis that the Institute is not a member of IFAC. Accordingly Chartered Secretaries Southern Africa contends that the definition of "independent accounting professional" should be amended to include either:**
- (a) **members of professional bodies already recognised as accounting officers in terms of the Close Corporations Act; or**
 - (b) **members of those professional bodies which are members of the APB or its successor body; or**
 - (c) **members of those professional bodies which are members of IFAC/ICSA.**

Yours faithfully

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Chief Executive Officer

APPENDIX A



1. Introduction

Chartered Secretaries Southern Africa celebrated its centenary in 2009. Southern Africa was the first division of the Institute to be established outside the UK only 18 years after the Institute's foundation in 1891. The Southern African Division comprises Botswana, Lesotho, Namibia, South Africa and Swaziland. Today there are divisions in Australia, Canada, UK, New Zealand, China, Malaysia, Singapore and Zimbabwe. Our members have been an important part of the financial sector over the past 100 hundred years in South Africa.

2. Comparison of qualifications

The comparative information below provides an overview of the qualification structures of the various professional bodies as well as a comparison between them insofar as course content is concerned.

2.1 Chartered Secretaries Southern Africa

SAQA Registration

Title:	Credits	SAQA ID:	NQF Level	Form of assessment
CIS Professional Qualification: Management and Administration	120	60651	5	All assessment is summative and based on written examinations
CIS Professional Qualification: Governance and Administration	120	60653	5	
CIS Professional Advanced Qualification: Governance and Administration	120	60655	6	
CIS Professional Post-Graduate Qualification: Company Secretarial and Governance Practice	130	60654	7	
Total	480			

Source: SAQA (2009)

CIS Qualification structure

60651 Level 5	Foundations of Law
	Financial Accounting I
	General Principles of Commercial Law
	Communication
	Economics
60653 Level 5	Management Information Systems
	Financial Accounting II
	Taxation
	Management Principles
60655 Level 6	Corporate Law
	Financial Accounting III
	Strategic and Operations Management
	Management Accounting
60654 Level 7 Board Examination	Corporate Secretaryship
	Corporate Administration
	Corporate Governance
	Corporate Financial Management

Source: Chartered Secretaries Southern Africa (2009)

In addition to the formal examinations, professional membership at different levels is awarded subject to meeting experiential requirements.

For the designation, Associate of the Chartered Institute of Secretaries (ACIS) six years related and relevant experience is required while for the designation Fellow of the Chartered Institute of Secretaries (FCIS) eight years related and relevant experience is required.

Only with such professional membership can members practise as accounting officers or governance professionals.

2.2 South African Institute of Chartered Accountants (SAICA)

All information below is taken from the SAICA website i.e. www.saica.co.za



SAQA Registration

Title:	Credits	ID:	NQF Level:	Form of assessment
Associate Accounting Technician	192	48911	5	<ul style="list-style-type: none"> • Log books • Written reports of portfolio management activities and results • Written reports of analyses and recommendations • Actual work done in relevant areas • Work related assignments • Verbal presentations • Portfolios • Projects • Practical exercises and demonstrations • Observation • Simulations • Role plays • Case studies • Oral questioning and / or interviewing • Peer assessment
Associate General Accountant	547	48914	6	
Chartered Accountant: Financial Management	698	48912	7	
Chartered Accountant: Auditing	679	48913	7	Written examinations Professional paper 1 (PP1) and Professional paper 2 (PP2) IRBA examination

Source: SAQA (2009)

Qualification Structure

Part I of the Qualifying Examination (QE I)

This is the standard setting exam which is written after the completion of the Certificate in the Theory of Accountancy (CTA) and is an assessment of core competence. To be eligible to write this exam a candidate must hold a CTA that has been accredited by SAICA.

This part of the examination covers the body of knowledge for

- financial accounting,
- management accounting and financial management,
- taxation,
- appropriate components of the supportive subjects,
- appropriate components of the information technology syllabus and
- the theory and concepts of auditing and corporate governance.

Part II of the Qualifying Examination – Financial Management (QE II FM)

This is the final written assessment of professional competence (Financial Management).

Part II of the qualifying examination is aimed at testing candidates' integrated practical knowledge gained in professional practice, commerce and industry, or the public sector. Here candidates will write either an

- Auditing or
- Financial Management paper,

depending on the specialism and training route they have chosen.

Note that the Part II auditing examination is known as the Public Practice Examination (PPE) and is set by the Independent Regulatory Board for Auditors (IRBA) who issue their own rules and regulations. This is the final written assessment of professional competence (Auditing) (SAICA, 2009).

2.3 South African Institute of Professional Accountants (SAIPA)

All information below is taken from the SAIPA website i.e. www.saipa.co.za

SAQA Registration

Title:	Credits	SAQA ID:	Level:	Form of assessment
Post-graduate Diploma: Professional Accountant in Practice	480	20391	7	Integrated assessment is performed on a continuous basis, using various assessment tools such as:
Post-graduate professional qualification: Professional Accountant in Business	480	20392	7	<ul style="list-style-type: none"> • Client files, the log book, case studies, projects, statements, reports and summaries. • Actual work products showing where the learner has met the outcomes. • Interpretation of information. • Handling of queries with clients, the receiver, the registrar, and other professional bodies. • Meeting the requirements of the constitution, code of conduct and by-laws of the Institute. • Professional evaluation examination

Source: SAQA (2009)

Qualification Structure

- Academic requirements:
A degree with the following core subject requirements from a SAIPA approved institution.
 - Financial Accounting 3
 - Taxation 1
 - Auditing 1 or Internal Auditing 2 or Internal Control & Code of Ethics 1 & 2
 - Corporate Law 1 or Commercial Law 2; and
 - Management Accounting
- Practical Training:
All applicants must comply with one of the following requirements:
 - At least 3 years under a supervised SAIPA Learnership

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- At least 6 years of relevant verifiable experience
- A completed training contract from another SAIPA approved professional body.

• SAIPA professional evaluation:

The SAIPA professional evaluation is a four hour exam written at various venues around the country either in March or October (SAIPA, 2009).



2.4 Chartered Institute of Management Accountants (CIMA)

All information below is taken from the CIMA website i.e. www.cimaglobal.com

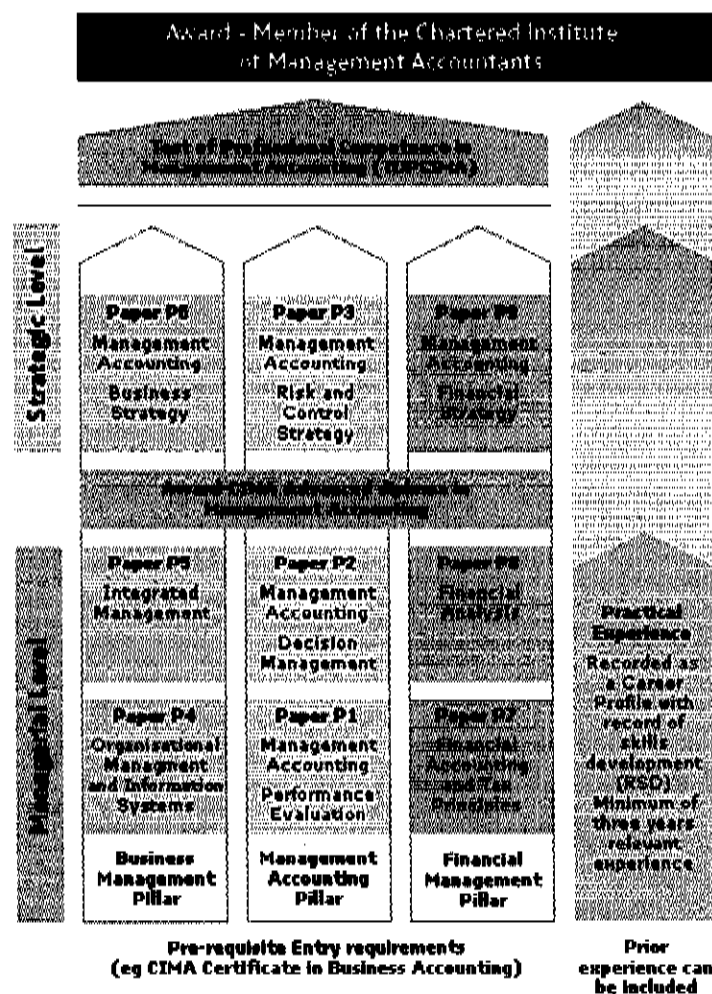
SAQA Registration

Title:	Credits	ID	Level	Form of assessment
Professional Qualification: Chartered Management Accountant	930	20400	7	All assessment is summative and based on written examinations

Source: SAQA (2009)

The Qualification Structure

The diagram below shows the CIMA Professional Qualification structure.



Qualification Structure

- CIMA Certificate in Business Accounting or another exempting qualification
- Nine exams from the CIMA Professional Qualification
- Three years relevant practical experience
- Test of Professional Competence in Management Accounting (CIMA, 2009).

2.5 Association of Chartered Certified Accountants (ACCA)

All information below is taken from the ACCA website i.e.

www.accaglobal.com

SAQA Registration

Title	Credits	SAQA ID:	LEVEL	Form of assessment
Diploma: Accounting Technician	252	20402	5	Assessment of competence, knowledge and understanding is undertaken through a combination of competence based examinations and work based simulations.
ACCA Professional Qualification (Chartered Certified Accountant)	780	63550	7	All assessment is summative and based on written examinations.

Source: SAQA (2009)

Qualification Structure

- F1 Accountant in Business
- F2 Management Accounting
- F3 Financial Accounting
- F4 Corporate and Business Law
- F5 Performance Management
- F6 Taxation
- F7 Financial Reporting
- F8 Audit and Assurance
- F9 Financial Management
- P1 Professional Accountant
- P2 Corporate Reporting
- P3 Business Analysis
- P4 Advanced Financial Management
- P5 Advanced Performance Management
- P6 Advanced Taxation
- P7 Advanced Audit and Assurance (ACCA, 2009).

3. Comparative table

A comparative table showing the composition of the qualifications of the above-mentioned accounting professional bodies with that of Chartered Secretaries Southern Africa is provided below.

From this table, it will be observed that one of the main differences between the accounting bodies and Chartered Secretaries Southern Africa is that SAICA, SAIPA and ACCA have modules on auditing, while both Chartered

Secretaries and CIMA do not. It would seem that the exclusion of auditing is the reason for non-recognition of Chartered Secretaries as independent reviewers. The question is why should this only apply to Chartered Secretaries and not to CIMA which also does not have a module on auditing?

As far as accounting goes, however, there is a very close equivalence. The absence of the words "accounting/accountant" in the formal name of the Institute should in no way derogate from the intellectual rigour of the accounting subjects required to be passed in order to obtain the qualification under which members practise i.e. ACIS [Associates] or FCIS [Fellows].



Comparison between qualifications – similarities and differences

NQF Level	CIS	SAICA	SAIPA	ACCA	CIMA
5	Financial Accounting 1			Accountant in Business	
5	Financial Accounting 2				
6	Financial Accounting 3	Financial Accounting	Financial Accounting 3	Financial Accounting	Financial Accounting
5, 7	Taxation	Taxation	Taxation 1	Taxation, Advanced Taxation	Tax Principles
6	Management Accounting	Management Accounting, Financial Management	Management Accounting	Management Accounting Financial Management	Management Accounting
5	Managing Information Systems	Components of the information technology syllabus			Organisational Management, Information Systems
5	Management Principles	Management Decision Making and Control			Risk and Control Strategy, Integrated Management, Business Strategy
6	Strategic and Operations Management	Strategy, Risk Management, and Governance			
6	Corporate Law		Corporate Law 1 or Commercial Law 2	Corporate and Business Law	
7	Corporate Governance	The theory and concepts of auditing and corporate governance.	Internal Control & Code of Ethics 1 & 2		
7	Corporate Administration			Performance Management, Advanced Performance Management	Performance Evaluation
7	Corporate Financial Management			Advanced Financial Management	Financial Strategy, Financial Analysis
5	Communication				
5	Economics				
5	Foundations of Law				
5	General Principles of Commercial Law				
7	Corporate Secretaryship				

7		The theory and concepts of auditing (IRBA exam for auditing)	Auditing 1 OR Internal Auditing 2	Audit and Assurance, Advanced Audit and Assurance	
7				Corporate Reporting	
7				Financial Reporting	
7				Professional Accountant	
7				Business Analysis	

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