

**BERMUDA STATUTORY INSTRUMENT**

**BR 52/1995**

**COMPANIES (FINANCIAL STATEMENTS AND AUDITOR'S  
REPORT) RULES 1995**

*[made under section 34 of the Companies Act 1981 [title 17 item 5] and  
brought into operation on 31 October 1995]*

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**Citation**

1 These Rules may be cited as the Companies (Financial Statements and Auditor's Report) Rules 1995.

**Interpretation**

2 References in these Rules—

(a) to the Act means the Companies Act 1981 [*title 17 item 5*];

(b) to a company shall, in the case of a unit trust, be construed as references to the unit trust;

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- (c) to the first financial period may, if the directors of the company so determine, be construed as the period ending with the second financial year end;
- (d) to financial statements, auditor's reports and auditor's statement may, in the case of a prospectus in respect of an offer of a specified series or specified class of shares, if the directors of the company so determine, be construed in respect only of the series or class of shares so specified;
- (e) to generally accepted accounting principles mean the generally accepted accounting principles referred to in section 84 of the Act; and
- (f) to generally accepted auditing standards means the generally accepted auditing standards referred to in section 90 of the Act.

**Information to be contained in financial statements**

3 (1) The financial statements of a company required to be attached to a prospectus by section 27(1)(h) of the Act shall—

- (a) in the case of a company where the prospectus is to be issued before the earlier of—
  - (i) the date on which the directors approved financial statements in respect of the company's first financial period for laying before a general meeting of the company; or
  - (ii) six months after the close of the company's first financial period,

consist of a written statement specifying the matters referred to in paragraph (2); and

(b) in any other case, shall comply with paragraph (3).

(2) The statement referred to in paragraph (1)(a) shall specify whether, on the date of issue of the prospectus—

- (a) the company has commenced business;
- (b) any dividends have been declared or paid;
- (c) the directors have approved any financial statements for laying before a general meeting of the company; and
- (d) the auditor has audited any financial statements of the company.

(3) The financial statements referred to in paragraph (1)(b) shall—

(a) in the case of a company whose directors have approved financial statements, prepared at a date not more than eighteen months prior to the date of issue of the prospectus, for laying before a general meeting of the company under section 84(1) of the Act, consist of the most recent of such financial statements; and

(b) in any other case, shall consist of—

- (i) a balance sheet as of a financial year end which shall not be more than eighteen months prior to the date of issue of the prospectus;
- (ii) a statement of results of operations for a period of not less than one year ending on the balance sheet date or, in the case of a company which has been incorporated for a period of less than a year, for the period from such incorporation ending on the balance sheet date;
- (iii) a statement of retained earnings or deficit for the period covered by the statement of results of operations;
- (iv) a statement of changes in financial position for the period covered by the statement of results of operations;
- (v) notes to the financial statements which notes shall include a description of, and identify, the generally accepted accounting principles used in the preparation of the financial statements; and
- (vi) such further information as may be required by the Act and the company's own Act of incorporation, if any, or its memorandum, and bye-laws.

(4) In the case of a company which is continuously offering its shares to the public and which, on the date of the issue of the initial prospectus had not commenced business, the financial statements attached to the initial prospectus shall be deemed to satisfy the requirements of this rule and rule 4 for the purposes of any subsequent prospectus if the date of issue of such prospectus is the earlier of—

- (a) six months after the close of the first financial period; or
- (b) the date on which financial statements in respect of the close of such first financial period have been approved

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by the directors for laying before a general meeting of the company.

**Documents to be attached to financial statements**

4 (1) In the case of a company which is not a mutual fund or a unit trust there shall also be attached to the financial statements of the company summary unaudited information in respect of the immediately preceding five financial year ends of the company, or in respect of such shorter period as may be available, and the summary unaudited information shall specify, as appropriate—

- (a) in respect of balance sheet items—
  - (i) total assets;
  - (ii) long term liabilities;
  - (iii) shareholders' equity;
  - (iv) share capital in issue by class; and
  - (v) shareholder's equity per share by class of share;
- (b) in respect of statement of results of operations items—
  - (i) sales or gross income;
  - (ii) extraordinary items;
  - (iii) realised gains or losses on investment sales;
  - (iv) net income; and
  - (v) earnings per share by class of share; and
- (c) in respect of statement of changes in financial position items, cash generated from, or used by,—
  - (i) operating activities;
  - (ii) investing activities;
  - (iii) financing activities as they relate to borrowing;
  - (iv) financing activities as they relate to shareholders' equity; and
  - (v) dividends paid per share by class of share.

(2) Where—

- (a) the financial statements referred to in rule 3(1)(b) have been prepared more than six months before the date of the issue of the prospectus; or

(b) the financial statements consist of a written statement, prepared in accordance with rule 3(1)(a),

and the company has commenced business, there shall also be attached to the financial statements, where applicable, unaudited financial statements containing the matters specified in paragraph (3).

(3) The matters referred to in paragraph (2) are—

(a) balance sheet as of the most recent financial year end unless—

(i) such financial year has been covered by the financial statements mentioned in rule 3(1)(b); or

(ii) such financial year ended less than one month prior to the date of issue of the prospectus;

(b) balance sheet as of a date which is not more than four months prior to the date of issue of the prospectus;

(c) a statement of results of operations for the period beginning on the date of the financial statements mentioned in rule 3(1)(b) (or, in the case of a company which is subject to rule 3(1)(a), beginning on the date of incorporation) and ending on the date of the balance sheet required under sub-paragraph (b);

(d) a statement of retained earnings or deficit for the period covered by the statement of results of operations; and

(e) a statement of changes in financial position for the period covered by the statement of results of operations.

(4) The prospectus shall also include a bold legend to the effect that the unaudited financial statements mentioned in paragraph (2) have not been audited by the auditor and either that—

(a) the report of the auditor relates to financial statements covering a period which ended more than six months prior to the date of issue of the prospectus; or

(b) the auditor has not completed the audit of any financial statements as of the date of the report.

(5) At the discretion of the directors of the company, there may be attached to the financial statements pro-forma financial statements comprising—

(a) where the company has presented such financial statements, a pro-forma balance sheet; and

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(b) where a business is being acquired by the company out of the proceeds of the security issue covered by the prospectus and the company has presented such financial statements—

- (i) a pro-forma combined statement of results of operations; and
- (ii) a pro-forma combined statement of changes in financial position.

(6) Where pro-forma financial statements are attached to a prospectus pursuant to rule 4(5), there shall be attached to those pro-forma financial statements a compilation report by the auditor addressed to the directors and prepared in accordance with generally accepted auditing standards stating the procedures the auditor has applied and whether the pro-forma financial statements described in paragraph (5) have been properly compiled.

(7) A prospectus shall also include a statement disclosing events occurring subsequent to the date of the audited financial statements (or where, in accordance with rule 3(1)(a) or 3(2), there are no audited financial statements, subsequent to the date of incorporation) but before the date of issue of the prospectus which either provide material additional information relating to conditions that existed at the date of the financial statements (or the date of incorporation) or which cause significant changes to assets or liabilities or which will or may have a significant effect on the future operations of the company or a statement that there are no such events.

**Auditor's Report or Auditor's Statement**

5 (1) In the case of a company where the prospectus is to be issued before the earlier of either the date the directors have approved any financial statements in respect of the company's first financial period for laying before a general meeting of the company, or six months after the close of the company's first financial period, there shall be attached to the prospectus a written statement by the auditor of the company confirming his acceptance of the appointment as auditor of the company.

(2) In any case, other than the case referred to in paragraph (1), an auditor's report shall be attached to the prospectus and such report shall be prepared in accordance with generally accepted auditing standards and shall be in respect of the financial statements specified in paragraph 3(3).

(3) Where the report of the auditor referred to in paragraph (2) above is attached to a prospectus, a copy of each of the financial statements referred to in rule 3(1)(b) shall be attached to the auditor's report.

**Consent of Auditor**

6 A report or statement of the auditor of the company shall not be contained in or attached to a prospectus and the name of the auditor of the company shall not be contained in a prospectus unless—

- (a) the auditor has given, and has not, before delivery of a copy of the prospectus for filing with the Registrar, withdrawn his written consent, which consent shall be dated within one week of the date of the filing of the prospectus with the Registrar, to the inclusion of the auditor's name and his report or statement in the form and context in which they are in fact included; and
- (b) a statement that the auditor has given and has not withdrawn that consent appears in the prospectus.

**Revokes B.R. No. 28 of 1992**

7 The Companies (Auditor's Report) Rules 1992 are revoked.