INSPECTOR'S REPORT

Companies and Intellectual Property Commission

a member of the dti group

INSPECTOR'S REPORT ON

JCI LIMTED (1894 / 000854 / 06)

CASE NUMBER: G72 (2017)

PREPARED BY

LANA VAN ZYL

DATE: 4 SEPTEMBER 2018

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DEFINITION OF TERMS

Complainant	Mr David John Smyth
Commission	Companies and Intellectual Property Commission
The Act	Companies Act, No 71 of 2008 (as amended)
JCI Limited	JCI Limited (1894 / 000854 / 06)
Inspector	Appointed Inspector Lana van Zyl
KPMG	KPMG Inc
SARS	South African Revenue Services
TWB	Tugendhaft Wapnick Banchetti and Partners
IFRS	International Financial Reporting Standards

ANNEXURES

Annexure "A"	Form CoR 137.1 (Notices to investigate)
Annexure "B"	Form CoR 139.1 (Compliance Notice)

BACKGROUND

1.1 On 20 December 2016 the Complainant formally filed a complaint with the Commission against JCI Ltd. The Complainant provided the following information and his exposure to JCI Limited as follows:

"1. Information on the complainant and his exposure to JCI Limited

The complainant is David John Smyth. He is a portfolio manager by profession, a CFA charterholder and holds a BSc (Hons) in Accounting & Finance. David Charles Palmer is a stock broker and a colleague of David John Smyth.

David John Smyth became a JCI shareholder in mid-2010 when a company in which he was a shareholder (alongside many of his employer's clients), Randgold & Exploration Company Limited (Randgold), concluded a settlement with JCI Limited. As part of this settlement, freshly issued JCI shares were distributed in specie to Randgold's shareholders.

*• JCI Limited issued a settlement circular on the **13th of May 2010** ahead of the shareholders' vote. On page 35 of the document, it was estimated that the most recent Group NAV of JCI Limited would have been **19.99 cents** per share on a post-settlement basis.*
*• JCI Limited's first audited financials for a financial year ending after the settlement took place should have been for the year ended 31 March 2011. The company elected to produce only consolidated results. The results, signed on the **3rd of September 2012**, indicated a net asset value per share of **5.38 cents**.*
*• JCI Limited issued a circular to shareholders on the **8th of July 2014** containing a Statement of Net Asset Value indicating a net asset value per share, excluding treasury shares, of **0.0087** cents per share.*

This horrendous collapse in the net asset value per share of the company merely serves to compound the urgent need for the company to produce its annual financial statements in line with its duty under the act. It also raises alarming questions about the board's inability to do so.

2. Description of the subject of the complaint
• Section 30(1) requires that "Each year, a company must prepare annual financial statements within six months after the end of its financial year" and section 30(2) requires that "the annual financial statements must…be audited, in the case of a public company".
• Audited consolidated annual financial statements which exclude the audited annual financial statements of the company itself do not qualify as audited annual financial statements in terms of the Companies Act 2008.
• JCI Limited changed its year end from 31 March to 30 June with effect from 2014.

• *JCI Limited only published audited consolidated annual financial statements in respect of its 2011 and 2012 financial years; its audited annual financial statements for 2011 and 2012 have thus not yet been published.*

• *JCI Limited has to date also not published its audited annual financial statements for 2013, 2014 and 2015.*

3. Names of each of the 4 parties involved in the conduct

3.1 JCI Limited, Registration Number 1894/000854/06.

3.2 Peter Henry Gray, director and CEO of JCI Limited since 24 August 2005.

3.3 Peter Richard Suter Thomas, appointed as director of JCI Limited on 12 September 2005 and as chairman on 31 July 2008.

3.4 Denis Michael Patrick Shepstone Daly, appointed as director of JCI Limited on 23 August 2010.

(Note: Messrs Gray, Thomas and Daly have been the sole directors of JCI Limited since 14 March 2013. Presumably they can be classified as "delinquent directors" in terms of the Companies Act 2008 as Section 162(5)(c)(iv)(a) reads "A court must make an order declaring a person to be a delinquent director if the person … while a director … acted in a manner … that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company". Section 162(3) empowers the Commission to apply to a court for an order declaring a person delinquent.)

4. Dates from which the conduct / offence, which is ongoing, occurred

JCI has actually committed 5 Reportable Irregularities in that there are 5 sets of annual financial statements it has failed to publish:

Year ended	**Due date (= dates from which the conduct / offence occurred)**	Months overdue by 31-Dec-16
Company afs 31 March 2011	30 September 2011	63
Company afs 31 March 2012	30 September 2012	51
Company and group afs 31 March 2013	30 September 2013	39
Company and group afs 30 June 2014	31 December 2014	24
Company and group afs 30 June 2015	31 December 2015	12

JCI can thus justifiably be described as a "serial and ongoing offender".

5. When and how the complainant became aware of the conduct

The complainant and David Charles Palmer (representing various other shareholders in JCI Limited) became aware of the conduct when JCI Limited failed to publish its audited annual financial

statements for each of its 2011, 2012, 2013, 2014 and 2015 financial years, either in hard copy or on its website (www.jci.co.za).

6. Information pertaining to the publication of its annual financial statements provided by JCI Limited on its website and in correspondence

This is summarised in the attached "promises, promises" document.

7. Earlier efforts of the complainant to obtain the annual financial statements of JCI Limited

In July 2015 Palmer approached KPMG who denied that the failure to publish audited annual financial statements constituted a Reportable Irregularity.

In March 2016 Palmer approached JCI Limited about its failure to publish audited annual. In its April 2016 reply, JCI Limited stated that it was "... in the process of completing all outstanding Annual Financial Statements, including and up to 2016. These are to be published in the third quarter of this year". This undertaking, as many given before and after to the JCI shareholders ("promises, promises"), was not kept.

Palmer then, in April 2016, approached the Independent Regulatory Board for Auditors.

By September or October 2016 KPMG accepted that a Reportable Irregularity had been committed by JCI Limited but details of this irregularity has to date not been divulged to the shareholders of JCI Limited.

The voluminous correspondence with JCI Limited, KPMG and IRBA will be made available if required.

8. Issued share capital and ownership of JCI Limited

JCI Limited had 3 780.5 million shares in issue on 31 December 2013. It had 14 995 shareholders on that date of which 4 185 were foreign shareholders. The foreign shareholders held 29.5% of the issued shares.

The behaviour of JCI Limited in flaunting the law has adversely affected international investors and thus the reputation of South Africa as an investment destination. I personally deal with non-resident JSE investors who now sit with these shares in their portfolios and am unable to answer their questions as to how this has been allowed to continue for so long."

1.2 Subsequent to the complaint received above, two other complaints were also received from the Complainant on 15 and 16 August 2017 which are related to the first complaint. The 15 August 2017

complaint relates to the alleged failure to deal with matters raised by the shareholders at the JCI's annual general meeting held on 9 June 2017 as required by Section 61(8) (d) of the Act:

"1. Description of the subject of the complaint

- *Section 61(8)(d) requires that an annual general meeting meeting "must, at a minimum, provide for the following business to be transacted ... any matters raised by shareholders, with or without advance notice to the company."*
- *Six questions were submitted to the directors by way of an email (attached) before the annual general meeting but were not dealt with at the meeting as a reading of the minutes of the meeting posted by JCI on its website shows.*
- *These six questions were*

1. When does JCI plan to publish the annual financial statements that comply with the requirements of the Companies Act?

2. Why is it still impossible to comply with the Companies Act? Are the directors of JCI not delinquent in this regard?

3. When does the board of JCI expect to have the reportable irregularities lifted? What are the implications of conducting business whilst such reportable irregularities are alive? Are the directors delinquent by allowing this situation to persist?

4. Why is the net asset value measured at 23 July 2012 and not at the year-end (30 June 2012)?

5. Is the indemnity voidable given the fact that JCI had defrauded Randgold?

6. Is JCI controlled by Investec or is JCI a subsidiary of Investec?"

1.3 The 16 August 2017 the complaint added Randgold & Exploration Company Ltd and KPMG Inc as additional respondents to JCI Ltd. The complaint relates to the alleged contravention of Section 93(3)(a) of the Act as the three parties allowed KPMG Inc to be placed in a conflict of interest and explain his statement as follows:

"*Section 93(3)(a) of the Companies Act requires that "an auditor appointed by a company may not perform any services for that Company ... that would place the auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act.*

- *Section 44(6) of the Auditing Profession Act requires that "a registered auditor may not conduct the audit of any financial statements of an entity, whether as an individual registered auditor or as a member of a firm, if, the registered auditor has or had a conflict of interest in respect of that entity, as prescribed by the Regulatory Board."*
- *The main companies under the control of Brett Kebble were JCI, Randgold and Western Areas Limited (since renamed Gold Fields Operations Limited).*

- *During October 2005, one month after Brett Kebble's death, the Investec constituted boards of JCI and Randgold appointed KPMG (Investec's auditors) as the auditors to both companies as well as the forensic accountants to JCI.*
- *During March 2006 Randgold's own independent forensic accountants incontrovertibly proved that Kebble/JCI had stolen the bulk of Randgold's listed shares. The directors of Randgold withheld this report from Randgold shareholders for more than two years.*
- *KPMG nevertheless remained the auditors to both JCI, the thief, and Randgold, its victim.*
- *During May 2006 the CEO of JCI and a partner of KPMG representing JCI misrepresented the above fraud to the Scorpions.*
- *During June 2006 KPMG were appointed as the forensic investigators to the Scorpions - to investigate the crimes perpetrated by their own client.*
- *During June 2006 Randgold formulated a claim against JCI which, if executed, would have bankrupted JCI and a section 417 inquiry would have ensued. Randgold thereafter prepared but never issued a summons against JCI.*

1. *Names of each of the parties involved in the conduct*

1.1 JCI Limited, Registration Number 1894/000854/06.

1.2 Randgold & Exploration Company Limited, Registration Number 1992/005642/06.

1.3 KPMG Inc, Registration Number 1999/021543/21.

1.4 The directors of JCI during March 2006 when the forensic report of Randgold's forensic accountant incontrovertibly proved that JCI had stolen from Randgold and KPMG was thus conflicted and could not provide services to both. These directors were: David Nurek, Peter Gray, Chris Lamprecht, Chris Nissen, Peter Tomas and Don Jowell.

1.5 The directors of Randgold during March 2006 when the forensic report of Randgold's forensic accountant incontrovertibly proved that JCI had stolen from Randgold and KPMG was thus conflicted and could not provide services to both. These directors were: David Nurek, Peter Gray, Chris Lamprecht, Chris Nissen and Brenda Madumise.

1.6 Carel Smit, Head of Sales & Markets for KPMG in Southern Africa who was instrumental in the appointment of KPMG as auditors to JCI and Randgold.

2. *Dates from which the conduct / offence, which is ongoing, occurred*

March 2006, being the date on which JLMC, the forensic accountants to Randgold, completed its forensic report for Randgold which incontrovertibly proved that JCI had stolen the bulk of Randgold's assets. KPMG, JCI and Randgold should at the latest on this date have realised that KPMG was conflicted and should not act for both the thief and the victim.".

2. MANDATE

2.1 Upon analysis of the initial complaint, it appeared that JCI may have contravened Section 30 of the Act. The Commissioner may direct an inspector or investigator to investigate a complaint a quickly as practicable. To effectively deal with the complaint the Commissioner directed Ms Lana Van Zyl per Form CoR137.1 on 7 March 2017 (**Annexure "A"**) to investigate the complaint against JCI Limited. The subsequent complaints received from the Complainant on 15 and 16 August 2017 are related to the first complaint and has been included in the investigation.

3. LEGISLATIVE FRAMEWORK

Section 28. Accounting records.

(1) A company must keep accurate and complete accounting records in one of the official languages of the Republic—

(a) as necessary to enable the company to satisfy its obligations in terms of this Act or any other law with respect to the preparation of financial statements; and

(b) including any prescribed accounting records, which must be kept in the prescribed manner and form.

(2) A company's accounting records must be kept at, or be accessible from, the registered office of the company.

(3) It is an offence for—

(a) a company—

(i) with an intention to deceive or mislead any person—

(aa) to fail to keep accurate or complete accounting records;

(bb) to keep records other than in the prescribed manner and form, if any; or

(ii) to falsify any of its accounting records, or permit any person to do so; or

(b) any person to falsify a company's accounting records.

(4) For greater certainty, the Commission may issue a compliance notice, as contemplated in section 171, to a company in respect of any failure by the company to comply with the requirements of this section, irrespective whether that failure constitutes an offence in terms of subsection (3).

29. Financial statements.—

(1) If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must—

(a) satisfy the financial reporting standards as to form and content, if any such standards are prescribed;

(b) present fairly the state of affairs and business of the company, and explain the transactions and financial position of the business of the company;

(c) show the company's assets, liabilities and equity, as well as its income and expenses, and any other prescribed information;

(d) set out the date on which the statements were published, and the accounting period to which the statements apply; and

(e) bear, on the first page of the statements, a prominent notice indicating—

(i) whether the statements—

(aa) have been audited in compliance with any applicable requirements of this Act;

(bb) if not audited, have been independently reviewed in compliance with any applicable requirements of this Act; or

(cc) have not been audited or independently reviewed; and

(ii) the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements.

(2) Any financial statements prepared by a company, including any annual financial statements of a company as contemplated in section 30, must not be—

(a) false or misleading in any material respect; or

(b) incomplete in any material particular, subject only to subsection (3).

(3) A company may provide any person with a summary of any particular financial statements, but—

(a) any such summary must comply with any prescribed requirements; and

(b) the first page of the summary must bear a prominent notice—

(i) stating that it is a summary of particular financial statements prepared by the company, and setting out the date of those statements;

(ii) stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited, as contemplated in subsection (1) (e);

(iii) stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises; and

(iv) setting out the steps required to obtain a copy of the financial statements that it summarises.

(4) Subject to subsection (5), the Minister, after consulting the Council, may make regulations prescribing—

(a) financial reporting standards contemplated in this Part; or

(b) form and content requirements for summaries contemplated in subsection (3).

(5) Any regulations contemplated in subsection (4)—

(a) must promote sound and consistent accounting practices;

(b) in the case of financial reporting standards for public companies, must be in accordance with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body; and

(c) may establish different standards applicable to—

(i) profit and non-profit companies; and

(ii) different categories of profit companies.

(6) Subject to section 214 (2), a person is guilty of an offence if the person is a party to the preparation, approval, dissemination or publication of—

(a) any financial statements, including any annual financial statements contemplated in section 30, knowing that those statements—

(i) fail in a material way to comply with the requirements of subsection (1); or

(ii) are materially false or misleading, as contemplated in subsection (2); or

(b) a summary of any financial statements, knowing that—

(i) the statements that it summarises do not comply with the requirements of subsection(1), or are materially false or misleading, as contemplated in subsection (2); or

(ii) the summary does not comply with the requirements of subsection (3), or is materially false or misleading.

Regulation 27. Financial Reporting Standards

Sees. 29(4)

(1) A company's financial statements may be compiled internally or independently.

(2) For all purposes of this regulation and regulations 28 and 29, a company's financial statements must be regarded as having been compiled internally, unless they have been 'independently compiled and reported', as deemed in regulation 26 (1)(e).

(3) .....

(4) For any particular company, any financial statements contemplated in section 28 or 29 must comply with the applicable standards for that category of company as follows:

Public companies listed on an exchange - IFRS

Public companies not listed on an exchange.

One of –

(a) IFRS; or ....

Section 30

(1) Each year, a company must prepare annual financial statements within six months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).

(2) The annual financial statements must—

(a) be audited, in the case of a public company; or

(b) in the case of any other profit or non-profit company—

(i) be audited, if so required by the regulations made in terms of subsection (7) taking into account whether it is desirable in the public interest, having regard to the economic or social significance of the company, as indicated by any relevant factors, including—

(aa) its annual turnover;

(bb) the size of its workforce; or

(cc) the nature and extent of its activities; or

(ii) be either—

(aa) audited voluntarily if the company's Memorandum of Incorporation, or a shareholders resolution, so requires or if the Company's board has so determined; or

(bb) independently reviewed in a manner that satisfies the regulations made in terms of subsection (7), subject to subsection (2A).

(2A).....

(3) The annual financial statements of a company must—

(a) include an auditor's report, if the statements are audited;

(b) include a report by the directors with respect to the state of affairs, the business and profit or loss of the company, or of the group of companies, if the company is part of a group, including—

(i) any matter material for the shareholders to appreciate the company's state of affairs; and

(ii) any prescribed information;

(c) be approved by the board and signed by an authorised director; and

(d) be presented to the first shareholders meeting after the statements have been approved by the board.

(4) The annual financial statements of each company that is required in terms of this Act to have its annual financial statements audited, must include particulars showing—

(a) the remuneration, as defined in subsection (6), and benefits received by each director, or individual holding any prescribed office in the company;

(b) the amount of—

(i) any pensions paid by the company to or receivable by current or past directors or individuals who hold or have held any prescribed office in the company;

(ii) any amount paid or payable by the company to a pension scheme with respect to current or past directors or individuals who hold or have held any prescribed office in the company;

(c) the amount of any compensation paid in respect of loss of office to current or past directors or individuals who hold or have held any prescribed office in the company;

(d) the number and class of any securities issued to a director or person holding any prescribed office in the company, or to any person related to any of them, and the consideration received by the company for those securities; and

(e) details of service contracts of current directors and individuals who hold any prescribed office in the company.

(5) The information to be disclosed under subsection (4) must satisfy the prescribed standards, and must show the amount of any remuneration or benefits paid to or receivable by persons in respect of—

(a) services rendered as directors or prescribed officers of the company; or

(b) services rendered while being directors or prescribed officers of the company—

(i) as directors or prescribed officers of any other company within the same group of companies; or

(ii) otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.

(6) For the purposes of subsections (4) and (5), "remuneration" includes—

(a) fees paid to directors for services rendered by them to or on behalf of the company, including any amount paid to a person in respect of the person's accepting the office of director;

(b) salary, bonuses and performance-related payments;

(c) expense allowances, to the extent that the director is not required to account for the allowance;

(d) contributions paid under any pension scheme not otherwise required to be disclosed in terms of subsection (4) (b);

(e) the value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them, as contemplated in section 42;

(f) financial assistance to a director, past director or future director, or person related to any of them, for the subscription of options or securities, or the purchase of securities, as contemplated in section 44; and

(g) with respect to any loan or other financial assistance by the company to a director, past director or future director, or a person related to any of them, or any loan made by a third party to any such person, as contemplated in section 45, if the company is a guarantor of that loan, the value of—

(i) any interest deferred, waived or forgiven; or

(ii) the difference in value between—

(aa) the interest that would reasonably be charged in comparable circumstances at fair market rates in an arm's length transaction; and

(bb) the interest actually charged to the borrower, if less.

(7) The Minister may make regulations, including different requirements for different categories of companies, prescribing—

(a) the categories of any profit or non-profit companies that are required to have their respective annual financial statements audited, as contemplated in subsection (2) (b) (i); and

(b) .....

(8) .....

Regulation 28. Categories of companies required to be audited

Sees. 30 (2), read with 30 (7)

(1) This regulation applies to a company unless, in terms of section 30 (2A), it is exempt from having its annual financial statements either audited or independently reviewed.

(2) In addition to public companies and state owned companies, any company that falls within any of the following categories in any particular financial year must have its annual financial statements for that financial year audited:

(a) any profit or non-profit company if, in the ordinary course of its primary activities, it holds assets in a fiduciary capacity for persons who are not related to the company, and the aggregate value of such assets held at any time during the financial year exceeds R 5 million;

(b) .....

or

(c) any other company whose public interest score in that financial year, as calculated in accordance with regulation 26 (2)-

(i) is 350 or more; or

(ii) is at least 100, if its annual financial statements for that year were internally compiled.

Section 61. Shareholders meetings.

(1) The board of a company, or any other person specified in the company's Memorandum of Incorporation or rules, may call a shareholders meeting at any time.

(2) – (6).....

(7) A public company must convene an annual general meeting of its shareholders—

(a) initially, no more than 18 months after the company's date of incorporation; and

(b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.

Section 66. Board, directors and prescribed officers.—

(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

Section 171. Issuance of compliance notices.—

(1) Subject to subsection (3), the Commission, or the Executive Director of the Panel, may issue a compliance notice in the prescribed form to any person whom the Commission or Executive Director, as the case may be, on reasonable grounds believes—

(a) has contravened this Act; or

(b) .....

(2) A compliance notice may require the person to whom it is addressed to—

(a) cease, correct or reverse any action in contravention of this Act;

(b) take any action required by this Act;

(c) restore assets or their value to a company or any other person;

(d) provide a community service, in the case of a notice issued by the Commission; or

(e) take any other steps reasonably related to the contravention and designed to rectify its effect.

(3) .....

(4) A compliance notice contemplated in subsection (1) must set out—

(a) the person or association to whom the notice applies;

(b) the provision of this Act that has been contravened;

(c) details of the nature and extent of the non-compliance;

(d) any steps that are required to be taken and the period within which those steps must be taken; and

(e) any penalty that may be imposed in terms of this Act if those steps are not taken.

(5) A compliance notice issued in terms of this section, or any part of it, remains in force until—

(a) it is set aside by—

(i) the Companies Tribunal, or a court upon a review of the notice, in the case of a notice issued by the Commission; or

(ii) .....

(b) the Commission, or Executive Director, as the case may be, issues a compliance certificate contemplated in subsection (6).

(6) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission or the Executive Director, as the case may be, must issue a compliance certificate.

(7) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission or the Executive Director, as the case may be, may either—

(a) apply to a court for the imposition of an administrative fine; or

(b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 214 (3), but may not do both in respect of any particular compliance notice.

CONSIDERATION

4.1 On 7 April 2017 the Inspector forwarded a letter to the Directors of JCI Limited and advised them that a complaint was filed by the Complainant with the Commission and that the Commissioner directed that the matter be investigated by the Appointed Inspector. The Directors were informed that the Complainant alleges the following:

4.1.1 JCI Limited acted in contravention of Section 30(1) that requires that a company must each year prepare annual financial statements within six months after the end of its financial year.

4.1.2 The audited **Group** Annual Financial Statements exclude the audited Annual Financial Statements of the Company itself which does not qualify as audited Annual Financial Statements in terms of the Companies Act 2008.

4.1.3 JCI Limited only published audited consolidated Annual Financial Statements in respect of its 2011 and 2012 financial years; its audited Annual Financial Statements for the Company itself for 2011 and 2012 have thus not yet been published.

4.1.4 JCI Limited has to date also not published its audited Annual Financial Statements for 2013, 2014 and 2015.

4.1.5 JCI Limited has actually committed 5 Reportable Irregularities in that there are 5 sets of Annual Financial Statements it has failed, since 30 September 2011, to publish the Company Annual Financial Statements of March 2011 and 2012 and since 30 September 2013 to 31 December 2015, the Company and Group Annual Financial Statements 2014 and 2015.

4.2 The CIPC also received a Reportable Irregularity ("RI") from the Independent Regulatory Board for Auditors ("IRBA").

4.2.1 The registered auditor of KPMG in his report/ letter dated 23 September 2016 to IRBA identified the RI, i.e. that no Group Consolidated Financial Statements have been prepared for the following year-ends: 31 March 2013, 30 June 2014 and 30 June 2015. In his letter dated 20 October 2016 to IRBA the registered auditor mentioned that he discussed the identified RI with the members of the JCI Limited management board and afforded them an opportunity to make representations in respect of the report.

4.2.2 He received written representation from the board that they consider the finalization of the outstanding audits as a matter of high priority, that all necessary resources have been made available to finalise the Financial Statements as soon as possible and that the Board will continue to act with diligence and haste to resolve this matter. He also subsequently received the draft **Group** Consolidated Financial Statements and awaited the draft June 2014 and June 2015 **Group** Financial Statements which "are expected to be provided for audit shortly.".

4.3. The Directors were requested to provide the Inspector with the details of their discussion with the registered auditor and the written representation the Board made to the registered auditor. The Inspector specifically also requested to be provided with with **the rationale and /or authority the Directors have** to justify the exclusion of the audited Annual Financial Statements of the Company itself from the audited **Group** Annual Financial Statements. The Directors were furthermore requested to provide the details of all the necessary resources made available to finalise the Annual Financial Statements. The Commission was on 11 January 2017 informed that the JCI Limited has the draft Annual Financial Statements and are attending to them with the auditors. On 1 March 2017 the shareholders were informed that it is anticipated that the audits will be completed during March 2017 and that the Annual General Meeting will be held in April 2017. This statement was subsequently changed on 24 March 2017 that the audits for the years 2013 to 2016 are well advanced and the Annual General Meeting is **expected to take place in June 2017**.

4.4 On 18 April 2017 the Directors responded. The Directors stated that JCI Limited has regularly updated shareholders regarding the delays in producing accounts." *The Board felt that to produce meaningless accounts where the tax estimates were wide ranging due to insufficient and inadequate accounting records inherited from the Kebble era was not in the interest of shareholders."* JCI Limited kept shareholders informed by updates on its website and they attached some of the more recent updates published on the website. The Directors furthermore stated that "*despite the setbacks in finalising the accounts, JCI have at all times ensured that the Company remains compliant with regulations and legislation as far as possible. To this end and cognisant of the delays in completing the account,* ***JCI contacted the Companies Tribunal*** *in November 2016 to advise them of the circumstances which had resulted in the Company not being able to hold an AGM and to request their guidance on the matter. Their advice was that JCI continue with the completion of the AFS and then contact them again. The majority of shareholders, although disappointed, have condoned the delay in preparation of the accounts, but have encouraged the Board to proceed as expediently as possible. We may also mention that there have been regular discussions between our Mr. Guy Patron and your Mr. Gideon Schutte whereby he has been kept informed as to the progress.".*

4.5. The following responses were provided to the points raised in the Inspector's letter of 7 April 2017:

4.5.1 JCI Limited have prepared accounts each year as required, but these could neither be finalised nor signed off which resulted in JCI Limited being unable to publish the relevant accounts or hold an Annual General Meeting. The overarching reasons for this were, firstly, that JCI Limited was in discussions with SARS regarding the Company's tax commitment

and, secondly, that JCI's auditors were not prepared sign off the accounts until settlement with SARS was reached.

4.5.2 JCI Limited continued to prepare accounts which, year on year, JCI Limited were given to understand were acceptable to the auditors, apart from the tax amount. However, upon commencement of the formal audit, the transactions relating to Boschendal required more attention and administration than was previously anticipated. A compromise was reached with SARS on 28 April 2016 and finally settled by May 2016 at which time final audit work began on all the outstanding financial years.

4.5.3 It is difficult to unbundle and determine Mr Smyth's exact meaning regarding the Company's annual financial statements. For the 2011 and 2012 financial years JCI Limited engaged an independent audit firm to compile the annual financial statements and these were signed off by the compilers as well as JCI Limited directors. The Company's auditors, KPMG, audited and signed off on the **group** annual financial statements and could not have done so without reference to the figures in the relevant accounts. This was explained to Mr Smyth in an email from JCI Limited dated 3 February 2017. As mentioned elsewhere, JCI Limited, under advice from the auditors and BDO who were appointed to assist in preparation of the accounts, agreed that it was meaningless to audit each of the companies in light of the substantial costs and time that a detailed audit process would incur. Accounts are prepared from trail balances (which trial balances are signed off by the auditors) and these accounts will be available to shareholders if requested.

4.5.4 It is interesting that no shareholder approached the Company for a copy of the accounts after the AGM in 2013 until early this year.

4.5.5 JCI Limited will prepare annual financial statements for the years 2013 to 2016, but there is no intention to have them audited. As pointed out these will be available for those shareholders who request them.

4.5.6 The Company is aware of the reportable irregularities and have placed notices on the website. There has been communication with IRBA, Tribunal and CIPC through your Mr. Gideon Schutte.

4.5.7 The complaints made to the Commission by Mr Smyth are substantially the same as those expressed in correspondence by Mr Smyth and Mr Palmer to JCI Limited over the past few years and, in particular, from March 2016 to current. JCI Limited have provided extensive explanation in response to Mr Smyth's correspondence some of which was thought to be

repetitive. In support of this, the following pertinent correspondence is attached and gives an indication of the clarification provided:

a) Letter from Mr Smyth dated 31 March 2016;
b) Response email from JCI Limited dated 11 April 2016;
c) Email and Letter from Mr Smyth dated 18 April 2016;
d) Response letter from JCI Limited dated 18 May 2016;
e) Letter from Mr Smyth dated 30 November 2016;
f) Response letter from JCI Limited dated 9 December 2016;
g) Email and Letter from Mr Smyth dated 19 December 2016;
h) Response letter from JCI Limited dated 9 January 2017;
i) Email from Mr Smyth and response email from JCI Limited.

4.5.8 The Directors also attached a copy of their response dated 18 October 2016 to KPMG regarding the reportable irregularity which should clarify the issues raised paragraph 4.2 above. The letter read as follows:

"Dear Ms Sooku

REPORTABLE IRREGULARITY

The Board of Directors of JCI Limited is in receipt of your letter dated 23rd September 2016 which included under cover thereof your letter of the same date addressed to Mr. Imran Vanker of the Independent Regulatory Board for Auditors ("IRBA") noting that under Section 45 of the Auditing Profession Act, No. 26 of 2005 ("the Act") you believe a reportable irregularity ("RI") has been committed ("the RI notification"). Your letter was received by us on 26 September 2016.

We confirm that on 28th September 2016 the Board discussed the RI statutory notification with you. During that conversation the Board informed you that it had not ceased its diligent efforts to ensure the Annual Financial Statements (AFS) in question were finalised as soon as practical and you accepted that. Both you and the Board were in agreement that despite the efforts of JCI after the SARS settlement was reached the format of the draft AFS as supplied to JCI by its accountants BDO were such that the date by which JCI had hoped to comply with, namely the end of August 2016, could not be met. There was strong debate as to whether a self-imposed target date could form the basis of an RI threshold especially as JCI was doing all it reasonably could do to move the matter to conclusion. You stated that despite the Board's views you still concluded that you had no alternative but to issue the RI. As you aware the JCI Board does not agree with your view. Had JCI been known that you

regarded the end of August 2016 as an RI threshold date it would have revised the date with you on compelling grounds as that date was only some six weeks after the tax settlement was achieved and in addition time would need to have been added for unforeseen issues.

The discussions made it clear, and you accepted same, that JCI continues to work as fast as it can with its external accounting professionals in order to meet your firm's requests and requirements as to the form and content of the draft AFS in question. Against that background the Board, without commitment but in good faith, will provide to your firm the AFS in question and any reasonably required and/or requested audit evidence as soon as possible. All necessary resources have been made available and the Board regards this matter as one of high priority.

In the interim you can be assured that the Board will continue to act with the diligence and haste that was recognized in our discussions held on 28th September 2016.

Yours sincerely,

The Board of JCI Limited".

4.5.9 The JCI Limited remains committed to finalising the accounts but JCI Limited is in the process of winding down and does not have a large staff complement. All staff, including the CEO, the other directors and the Company Secretary have been available and extensively involved. The dedicated services of JCI Limited's tax consultant have been utilised as well as the independent compilers of the accounts. Other than finalisation of the AFS's JCI Limited's other focus is the substantial claim against the previous auditors, Charles Orbach and Company which also requires extensive time and energy. Subsequent to the complainant's report to the Inspector, the further final group accounts for 2014/2015 and 2016 have been provided to the auditors. A group audit committee meeting has been scheduled for 21 April, where it is intended to finalise and sign off the group accounts for the years 2013 to 2016.

4.5.10 JCI Limited stated further that once the compromise was signed with SARS, JCI Limited and to a degree the auditors, were over optimistic in the estimation of finalising the accounts. The favourable settlement resulted in unforeseen matters which had to be addressed. In addition, the previously prepared accounts of 2013 and 2014 which were partially audited had to be completely restructured and a rebate of the audit fees incurred was negotiated. This resulted in starting again with preparation of the 2013 accounts and the subsequent years. Due to these delays KPMG were put in a position where the audit team that had been scheduled to complete the audit were not available because of other annual commitments and therefore could only provide a team early in 2017.

4.5.11 The sale of the Group's interest in Boschendal incurred substantial unexpected work for the auditors, although details of the transaction had been circulated to JCI Limited shareholders and subsequently approved at a special meeting. A copy of the circular in this regard is attached which reflects some of the implications from an auditing perspective, as this was by far the largest asset owned by the Group. The auditors also revisited the tax compromise as this, as previously explained, had a major impact on the Company's financial standing.

4.5.12 In conclusion, JCI Limited believes that June 2017 is realistic and that everything is now in place for a meeting to be called in June as there are no major outstanding issues for signing off at the aforementioned audit committee meeting on 21 April 2017. It is still the intention to provide **group** audited annual financial statements at the meeting and to only have unaudited Company accounts prepared from trial balances (which trial balances are signed off by the auditor), made available to shareholders requesting such accounts. Obviously, accounts are not prepared in terms of IFRS as the companies have not traded for the past 12 years. We trust that the above together with the attachments provide you with adequate information but remain available for any further assistance or provision of information. We apologize for not submitting the response earlier, but in our efforts to finalise the accounts, negotiate and focus on our action against the previous auditors and the holidays, we are under severe time constraints.

4.5.13 The Inspector on 10 May 2017 forwarded an email to 'TMputle@companiestribunal.org.za' and 'Selby Magwasha': **Subject:** JCI Limited requesting assistance from Ms Tebogo Mputle /Mr Selby Magwasha. The Inspector explained that according to the CEO, Peter Gray, of JCI Limited there "has been communication with IRBA, Tribunal and CIPC through Mr Gideon Schutte. That will relate to the Reportable Irregularities for a delay in completing the Annual Financial Statements. I explained that apparently JCI Limited contacted the Companies Tribunal in November 2016 to advise the Companies Tribunal of the circumstances which had resulted in the JCI Limited not being able to hold an AGM and requested guidance on the matter. *"Their advice was that JCI continue with the completion of the AFS and then contact them again."* The Inspector asked if the Companies Tribunal received any such request and if possible the advice that was given. Ms Mputle phoned the Inspector and advised that no such request was received.

4.5.14 On 25 August 2017 the Inspector received a letter from JCI Limited informing the Inspector that JCI Limited have now finalised their outstanding accounts and the audit on these has been completed. The accounts have been published on the JCI website and, on 9 June 2017, JCI held its AGM and the accounts were presented to the shareholders. Subsequent to this the financial statements were submitted to the Commission as required and attached the Commission's confirmation receipt of JCI Limited's Annual financial Statements for the

years 2005 to 2012. JCI Limited also indicated that they are in the process of preparing the 2017 accounts and, as a part of the audit process, the auditors require confirmation that Commission is satisfied that the Company has conformed with the Companies Act as far as possible in its basis of preparation of the audited financial statements as submitted to Commission on 26 June 2017 and further, that all statutory commitments in terms of the Companies Act have been fulfilled. It should be borne in mind that JCI is in an ongoing wind-down process. JCI Limited also requested the Commission to provide it with a letter in response to the above as soon as possible so that the 2017 audit can proceed without delay.

4.5.15 On 11 September 2017 the Inspector thanked the JCI Limited for the letter dated 25 August 2017 and attachments received on 29 August 2017. The Inspector referred to the JCI Limited's statement that **it requires confirmation that the Commission is satisfied that the Company has conformed with the Companies Act No. 71 of 2008 as amended as far as possible in its basis of preparation of the audited financial statements as submitted to Commission on 26 June 2017, as well as all statutory commitments in terms of the Companies Act.** The Inspector reminded the JCI Limited that in the Inspector's letter dated 7 April 2017 their response was requested in respect of the Group Annual Financial Statements that **excluded** the audited Annual Financial Statements of the Company itself which is not consistent with the requirements of the Act and that JCI Limited in their response dated 18 April 2017 mentioned that "*JCI contacted the Companies Tribunal in November 2016 to advise them of the circumstances which had resulted in the Company not being able to hold an AGM and to request their guidance on the matter. Their advice was that JCI continue with the completion of the AFS and then contact them again.*". JCI Limited was requested whether it has contacted the Companies Tribunal after the completion of the financial statements and if so, what was the view of the Companies Tribunal. The Inspector also requested that they must please attach their response if JCI Limited received a response in writing.

4.5.16 The Inspector also reminded the JCI Limited that it referred to the fact that "*the Company, under advice from the auditors and BDO who were appointed to assist in preparation of the accounts, agreed that it was meaningless to audit each of the companies in light of the substantial costs and time that a detailed audit process would incur. Accounts are prepared from trail balances (which trial balances are signed off by the auditors) and these accounts will be available to shareholders if requested.*". JCI Limited also reiterated in the penultimate paragraph of its letter that "*there is no intention to have them audited.*".

4.5.17 The Inspector reiterated her view that Section 30(1) and (4) of the Act is clear that the annual financial statements must be audited, in the case of a public company, and that the annual financial statements of **each company** are required in terms of this Act to have its annual

financial statements audited. The Inspector also brought to their attention that Regulation 27: Financial Reporting Standards states in sub-regulation (4) for any particular company, any financial statements contemplated in Section 28 or 29 of the Act must comply with the applicable standards for that category of company. The Financial Reporting Standard for public companies listed on an exchange is International Financial Reporting Standards.

4.5.18 The Inspector informed the JCI Limited that she noted the Notes to the Financial Statements, specifically number 1: "*Basis of preparation. In this paragraph the Board of Directors makes it clear that the financial statements have not been prepared in accordance with IFRS and the Companies Act.* It further states that the financial position, results of operations and cash flows of the Group "*may materially differ from those presented had the financial statements been prepared in accordance with IFRS and the requirements of the Act.*"

4.5.19 The Inspector made it clear in her letter of 11 September 2017 that based on the available information she is not in a position to advise JCI Limited that the Commission is satisfied that the JCI Limited has conformed with the Companies Act or IFRS in its basis of preparation of the audited financial statements as submitted to the Commission on 26 June 2017 or that all statutory commitments in terms of the Act have been fulfilled.

4.6 On 26 October 2017, the Inspector received a letter from TWB in respect of KPMG's involvement with JCI Limited and the Randgold and Exploration Company. TWB stated that they represent JCI Limited on whose behalf they have been instructed to address this letter. TWB also stated that many of the allegations are a repeat of similar allegations made by Messrs Smythe and David Palmer, who have made common cause in this matter. For the purpose of this report I will highlight the relevant part of the letter that relates to the core complaint, i.e. the preparation of the annual financial statements in compliance with the the Act and in terms of IFRS.

4.6.1 TWB stated that it is common cause that the present board of JCI Limited inherited a company fraught with legal, tax and other problems, created during the reign of Brett Kebble. It has taken the directors many years, and at considerable cost, to try and address each of the problems that they confronted, and have been greatly assisted in so doing, by KPMG. Amongst other things, the board had to deal with very substantial litigation. One matter was a very voluminous application brought in the High Court, by a disgruntled shareholder, to place JCI Limited in liquidation, *inter alia,* on the grounds that its financial statements had not been published. The application had absolutely no merit. It was opposed by JCI Limited and was dismissed by the court. Another case, based on a judgment secured in the USA, against JCI Limited during the Brett Kebble era, was for nearly R2 billion. It resulted in extensive litigation in South Africa over a protracted period, when the plaintiff sought to

enforce the judgment against JCI Limited. After a long and difficult legal battle, JCI Limited succeeded in having the claim dismissed. At the AGM held on 24 January 2013, the board of JCI Limited was criticised for incurring legal costs in contesting that claim, whilst the case was in progress. Yet, had the board not done so, JCI Limited would not have been able to meet the judgment and liquidation would have ensued, with the complete destruction of shareholder value. At that same AGM, Mr Palmer appeared to be motivating for the winding-up of JCI Limited, contending that it was insolvent.

4.6.2 Apart from the litigation brought against JCI Limited, and other litigation instituted by JCI Limited to enforce claims and recover assets belonging to the Group, there were complex tax matters that had to be addressed and ultimately, after a very lengthy period, were resolved in terms of a compromise reached with SARS in April 2016. It was only once that agreement had been concluded with SARS, that JCI Limited was in a position to proceed with the finalisation of its financial statements for the periods ended 31 March 2013 to 30 June 2016, which could not be issued in the past. This was spelt out in the Chairman's Report in the 2016 AFS. In that same Report, the following explanation was provided by the Chairman regarding the basis of preparation of the financial statements –

"The financial statements are prepared in accordance with the basis of accounting set out below which has been determined by the Board of Directors, ***which is not in accordance with International Financial Reporting Standards ("IFRS") and the requirements of the Companies Act of South Africa****. The financial position, results of operation and cashflows of the Group may materially differ from those presented had the financial statements been prepared in accordance with IFRS and the requirements of the Companies Act of South Africa.* ***The Board of Directors considers this basis to be the most suitable in the circumstances for shareholders.***" (Emphasis added).

4.6.3 The 2013 to 2016 financial statements were presented at the AGM of JCI Limited held on 9 June 2017. Shareholders were given the opportunity of asking any questions on the Report of the Chairman and CEO, and also in respect of the financial statements. There were no questions raised. All the resolutions which were before the meeting, were passed by shareholders holding 98.27% of the issued shares, who were present or represented at the meeting. In addition to the shareholder meetings, shareholders were at all times kept updated regarding the affairs of JCI and developments, by way of SENS Announcements and on the JCI website.

4.6.4 The above is but a summary of a few of the difficulties that were faced by the board of JCI Limited in trying to unravel the affairs of the Group, given the nefarious conduct of the affairs of the Group under the control of Brett Kebble. The board's objective at all times was to seek to maximise value for the benefit of JCI's shareholders, and to fend off the massive

litigation, which had it succeeded, would have seen the complete destruction of shareholder value and resulted in the liquidation of JCI.

4.7 On 28 November 2017 JCI Limited communicated to the shareholders that following the communication to shareholders dated 6 October 2017, a number of meetings have been held with the KPMG audit partners. In view of the recent developments, KPMG would at best only be able to commence with the 2017 JCI audit in the early part of 2018. Shareholders will be updated via the website as further information becomes available.

4.8 On 30 January 2018 JCI Limited communicated the following to the shareholders that the directors are pleased to announce that a settlement has been reached with Charles Orbach and Company in the amount of R13 million. JCI Limited will withdraw the action against Charles Orbach as soon as full payment of the settlement amount is received. In respect of Randgold and Exploration Company Limited matter, the shareholders are referred to the 17th of August 2015 communication and the notes in the JCI Limited Group Financial Statements published on 11 May 2017 in this regard. This matter is ongoing. The Board is investigating the ramifications of this action on the proposed final winding up of the Company. Regarding the 2017 Annual Financial Statements and Audit, following the communication to shareholders dated 28 November 2017, the Directors are still awaiting confirmation from KPMG as to when they will be in a position to commence with the 2017 Annual Financial Statements as KPMG's internal review process has still not been completed. Shareholders will be updated via the website as further information becomes available.

4.9 On 17 April 2018 the following communication to shareholders on a Reportable Irregularity and 2017 audit was placed on the JCI Limited website:

17 April 2018

Shareholders are advised that the Company received a letter from KPMG on 1 March 2018 advising that a further Reportable Irregularity had been lodged with the Independent Regulatory Board for Auditors (IRBA) and that JCI were requested to respond within 30 days. JCI complied with the request and the following letter was sent to KPMG on 26 March 2018 in response to the RI:

"JCI LIMITED RESPONSE TO KPMG NOTIFICATION OF REPORTABLE IRREGULARITY DATED 1 MARCH 2018

We were ready for you to commence with the audit of the Group and JCI annual financial statements in September 2017. Lack of activity post the 2016 audit has made the preparations for the 2017 audit relatively easy. However, your inability to confirm when you would be in a position to proceed with the audit has delayed the process and is the only reason why the deadline of 31 December 2017 has been missed. This is in spite of our repeated communications with yourselves for clarity and confirmation on KPMG's readiness to embark on the audit.

As far back as July 2017 we informed you that it would not be wise to change auditors at this crucial stage in the winding down process of the Company. The appointment of new auditors would place the Company in an invidious position where the new auditors would probably have to do a full review of the historical data. This process would entail considerable work and create unnecessary delays in the audit process, which is exactly what we were trying to avoid in finalising the 2017 audit. We place reliance on your knowledge of the situation the Company finds itself in and it would be a time consuming and costly exercise to brief a new firm.

You have indicated your preparedness to continue with the audit on numerous occasions. We do not know of any valid reason why this audit cannot commence.

Referring to the particulars of the reportable irregularity as set out in your letter to the Independent Regulatory Board for Auditors (IRBA) which was attached to your letter of 1 March 2018, the following refers:

1.1 "The group financial statements have not been prepared for the 30 June 2017 year-end"

This statement is not correct. The group financial statements have been prepared by JCI and were ready and available to be audited in September 2017. Since this time you have requested that JCI hold back on providing them with any documentation, pending the outcome of the KPMG internal risk assessment.

1.2 "The Company has not prepared audited financial statements since the 2005 financial year-end"

This is not correct. The JCI Group financial statements from 2005 to 2007 were disclaimed by KPMG and the 2008 and 2009 JCI Company financial statements as well as the Group financial statements were qualified (modified opinion). The JCI Company annual financial statements as well as the Group financial statements for the 2010 period were audited.

The JCI Company annual financial statements for the periods 2011 to 2016 were compiled by an external auditor (Henry van der Merwe – auditor as compiler). JCI agreed with KPMG that it would serve no purpose to audit the individual financial statements for the 2011 to 2016 periods and this is corroborated by way of a note in the group financial statements from the 2011 to the 2016 periods.

1.3 "The subsidiaries per Annexure A have not prepared audited financial statements."

As per 1.2 above, in discussions between JCI and KPMG, it was agreed that the majority of the standalone annual financial statements would not be audited as these were either dormant, deregistered or liquidated.

For completeness, JCI Ltd, JCIIF, JCI Gold and CMMS, the material JCI subsidiary, were compiled up to 2016 and the 2017 accounts have been prepared, subject to any audit adjustments.

1.4 The consolidated trial balance was audited. This ensured that all entries were audited, but as agreed with KPMG there would be no purpose in preparing the audited financial statements for all subsidiaries.

In fact, at both of the most recent Annual General Meetings, held on 24 January 2013 and 9 June 2016 respectively, there were no objections from the shareholders present at the meetings on the accounts presented and no one requested audited accounts for the subsidiaries at those meetings. At the Company's Annual General Meeting held on 9 June 2017, KPMG was elected as JCI's auditors for the 2017 year end. Both Carel Smit and Bavhana Sooku of KPMG were present at that meeting.

In addition, the following are the announcements that JCI has put on its website which KPMG were well aware of:

10 July 2017 – "JCI Limited AGM Minutes"

Minutes of the Annual General meeting held on 9 June 2017;

06 October – "2017 Audit and KPMG"

"Shareholders are advised that, given the uncertainty at KPMG, a meeting with the audit partners will take place within the next two weeks. The JCI website will be updated as soon as there is any new information."

28 November 2017 –"JCI 2017 AFS and Audit – 28 November 2017"

"Following the communication to shareholders dated 6 October 2017, a number of meetings have been held with the KPMG audit partners. In view of the recent developments, KPMG would at best only be able to commence with the 2017 JCI audit in the early part of 2018.

Shareholders will be updated via the website as further information becomes available."

30 January 2018 – "Update on Legal matters and the 2017 Audit – 30 January 2018"

"..... 2017 ANNUAL FINANCIAL STATEMENTS AND AUDIT

Following the communication to shareholders dated 28 November 2017, the Directors are still awaiting confirmation from KPMG as to when they will be in a position to commence with the 2017 JCI audit as KPMG's internal review process has still not been completed.

Shareholders will be updated via the website as further information becomes available."

KPMG, by submitting this reportable irregularity, have confirmed that they are JCI's auditors. The only reason for the delay is that KPMG have not commenced with the audit.

Please refer to the attached "Annexure A (JCI response)" for a complete response on this point. We await your further communication."

The Directors have received no further feedback from either KPMG or IRBA to-date.

2017 ANNUAL FINANCIAL STATEMENTS AND AUDIT

Subsequent to the above Reportable Irregularity, KPMG have not communicated their intentions regarding the JCI 2017 Audit.

The Directors have investigated various alternatives to identify the most feasible solution to the current impasse.

Shareholders will be kept advised as further information becomes available. "

4.10 On 17 April 2018 the Inspector received the following Reportable Irregularity Report that the Independent Regulatory Board for Auditors forwarded to the Commission:

Particulars of the reportable irregularity are:

1) JCI Limited's directors are responsible for management of the Company, which includes the preparation of financial statements in terms of section 66(1) of the Companies Act. JCI Limited has failed to comply with section 30 of the Companies Act which requires that a company must prepare annual financial statements within six months after the end of its financial year.

The following is brought to your attention with reference to point 1 above:

1.1) the group financial statements have not been prepared for the 30 June 2017 year-end;

1.2) the Company has not prepared audited financial statements since the 2005 financial year-end; and

1.3) the subsidiaries per Annexure A have not prepared audited financial statements. *Refer to Annexure A for the year of the last audited financial statements for the subsidiary companies.*

Annexu

Subsidiaries	Year of last audited financial statements
JCI Gold Limited	2004
Consolidated Mining Management Services Limited	2000
JCI Investment Finance Pty Ltd	2009
Aconcagua 24 Share Block Company	2010
Alongshore Resources Pty Ltd	2004
Barnato Exploration Limited	2012
Battleaxe Estate and Investments Pty Ltd	2012
Catwalk Investments 394 Pty Ltd	2012
DAB Securities Limited	2012
Jubilee Prospectors Limited	2012
Kirstenberry Lodge Pty Ltd	2012
Kovacs Investments 620 Pty Ltd	2012
Lindum Reefs Gold Mining Company Limited	2012
Letseng Investment Holdings Pty Ltd	2008
Onshelf Investments 101 Pty Ltd	2012
Onshelf Trading 80 Pty Ltd	2012
Rapivest 18 Pty Ltd	2012
Cape Verde Pty Ltd	2010

We have received the following representation from the CEO:

- In respect of point 1.1 above, since the first report dated 1 March 2018, the group financial statements for the 30 June 2017 year-end have been compiled but have not been audited and consequently not issued within six months of its year end.
- In respect of point 1.2 above, the status of the Company financial statements remain unchanged.
- In respect of point 1.3 above, the status of the subsidiaries financial statements per *Annexure A* remain unchanged.

4.11 On 22 August 2018 the following communication to shareholders was placed on the JCI Limited website:

"22 August 2018

The Directors are pleased to advise that KPMG have agreed to proceed with the JCI audit. KPMG will do the audit for both the 2017 and 2018 financial years simultaneously. KPMG have indicated that the audit will be completed in September, with the result that the AGM is likely to be held in October 2018.

Shareholders will be advised when a date has been determined for the Annual General Meeting. Once the audit has been completed and the Annual Financial Statements finalised, the directors will be in a position to proceed with the voluntary winding up of the Company which will commence once the AGM has been held and the necessary resolutions have been passed.

Further updates will be provided to Shareholders via the JCI website.".

5. CONCLUSION

5.1 The core of the complaint filed by the Complainant on 20 December 2016 with the Commission is that the Audited Annual Financial Statements were not compiled as per the requirements of Section 30 of the Companies Act, No 71 of 2008, as amended. Section 30(1) requires that each year, a company must prepare annual financial statements within six months after the end of its financial year and Section 30(2) requires that "the annual financial statements **must be audited in the case of a public company**. It follows that audited consolidated annual financial statements which **exclude** the audited annual financial statements of the company itself **do not qualify as audited annual financial statements in terms of the Companies Act 2008.**

5.2 JCI Limited only published audited **consolidated** annual financial statements in respect of its 2011 and 2012 financial years; its **audited annual financial statements** for 2011 and 2012 **have thus**

not yet been published. JCI Limited has to date also not published its audited annual financial statements for 2013, 2014 and 2015.

5.3 The Complainant's subsequent complaint filed on 15 August 2017 relates to the alleged failure to deal with matters raised by the shareholders at the JC Limited's annual general meeting held on 9 June 2017 as required by Section 61(8) (d) of the Act. Although valid questions were asked, the fact that the Directors have not, as alleged, dealt with it despite that fact that they were required to do so in terms of Section 61(8) (d), would not have changed the outcome of the meeting based on the available information gathered during the investigation.

5.4 The 16 August 2017 complaint added Randgold & Exploration Company Ltd and KPMG Inc. as additional respondents to JCI Limited. The complaint relates to the alleged contravention of Section 93(3)(a) of the Act as the three parties allowed the KPMG to be placed in a conflict of interest and explain his statement as follows: Section 93(3)(a) of the Companies Act requires that "a*n auditor appointed by a company may not perform any services for that Company ... that would place the auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act. ".*

5.5 In January 2018 the following statement appeared on the website of SAICA in respect of KPMG Inc:

"MEDIA STATEMENT ISSUED BY THE NTSEBEZA INQUIRY

The Independent Inquiry has been convened by the South African Institute for Chartered Accountants (SAICA) after receipt of allegations that some of its members employed by KPMG have allegedly engaged in conduct which is in contravention of the SAICA Code of Professional Conduct.

This inquiry will be conducted by an Independent Panel comprising Senior Members of the Legal and Accountancy Professions, to be chaired by Advocate Dumisa Buhle Ntsebeza SC. Advocate Ntsebeza SC has been selected to chair this Independent Inquiry for a number of reasons. He is one of the country's leading senior advocates, and deservedly earns the recognition of being one of the country's top Silks. Moreover, between 1995 and 2010, he sat as an Acting Judge in various divisions of the High Court of South Africa on a number of occasions, a position he was appointed to by various Ministers of Justice. He has also sat as an Acting Judge in the Labour Court of South Africa. Whilst sitting as a judge in those Courts, he has churned out several published judgments some of which have received wide-ranging reviews by academics in reputable journals like the South African Law Journal."

5.6 It is clear that the allegations that some of its members employed by KPMG have allegedly engaged in conduct which is in contravention of the SAICA Code of Professional Conduct would be part of the inquiry. The Inspector will thus not address those allegations in this Report as it would be dealt with by the Ntzebeza inquiry.

5.7 The Directors of JCI Limited were requested if they have contacted the Companies Tribunal after they completed the financial statements (at that stage in respect of the years 2013; 2014 and 2015) and if so, what was the response by the Companies Tribunal. No response was received from the Directors of JIC Limited in this regard. The Tribunal has also responded to the Inspector that they **did not receive any request** from JCI Limited.

5.8 The Directors of JCI Limited informed the shareholders on the Reportable Irregularity dated 1 March 2018. The Directors *inter alia* made it clear far back as July 2017, they informed KPMG that it would not be wise to change auditors at this crucial stage in the winding down process of the Company. The appointment of new auditors would place the Company in an invidious position where the new auditors would probably have to do a full review of the historical data. Why would a review of historical data place the JCI Limited in an undesirable position, is it that it can possibly reveal, as alleged, insolvency as far back as 2013? If it relates only to the additional costs JCI Limited will pay for such a review, why not just say so? It is highly questionable why the Directors of JCI Limited could not obtain new auditors to assist them with the audit. It is also common knowledge that the internal review undertaken by KPMG as well as the Ntsebeza Inquiry would have delayed the availability of KPMG auditors.

5.9 After careful consideration of the available information, the Inspector **concludes** as follows:

5.9.1 The Board of Directors of JCI Limited and the JCI Limited, a public company, have not prepared or provided the Inspector with the Annual Audited Financial Statements for the years 2011 to 2017 and the Board of Directors of JCI Limited and JCI Limited have consequently **breached Section 30 (1); (2) and (4) of the Companies Act.** JCI Limited failed to publish its audited Financial Statements for each of its 2011, 2012, 2013, 2014, 2015, 2016 and 2017 financial years, either in hard copy or on its website. Note was taken of the 22 August 2018 statement in respect of the auditing of the Financial Statements for both the 2017 and 2018 financial years. The auditing of the 2018 Financial Statements will for the sake of completeness also be required to be submitted to the Commission upon finalization.

5.9.2 Regulation 27 deals with the Financial Reporting Standards and it requires in sub-regulation (4) that for any particular company, any financial statements contemplated in Section 28 or 29 of the Act must comply with the applicable standards for that category

of company. The Financial Reporting Standard for public companies listed on an exchange is International Financial Reporting Standards. **The Board of Directors of JCI Limited and JCI Limited have consequently breached Regulation 27(4).**

5.9.3 In terms of Section 61(7) (b) a public company must convene an annual general meeting of its shareholders once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown. The Board of Directors of JCI Limited has not provided written proof that it has contacted the Companies Tribunal with a view to obtain approval for having annual general meetings later than the prescribed 15 months period provided for in Section 61(7)(b) or with proof of a formal application to the Companies Tribunal. The Inspector consequently concludes that **the Board of Directors of JCI Limited and JCI Limited have repeatedly breached the Section 61 (7) (b).**

5.9.4 It is proposed that a final opportunity be given to the Board of Directors of JCI Limited and JCI Limited to correct or reverse the non-compliance with Section 30(1); (2) and (4) as well as Regulation 26 (4) of the Act. The Inspector propose that the opportunity be given to Board of Directors of JCI Limited through the issuing of a compliance notice.

6. RECOMMENDATION

6.1 It is recommended that the Commissioner approve and sign the compliance notice (**Annexure "B "**) in terms whereof the Board of Directors of JCI Limited (1894 / 000854 / 06) is required to within **60 business days** from the date of the Notice, to:

6.1.1 submit to the Commission the Group Annual Audited Financial Statements for the years ending 31 March 2011, 31 March 2012, 31 March 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017 and 30 June 2018, fully compliant with Section 30 (1); (2) and (4) of the Companies Act No 71 of 2008, as amended, as well as Regulation 27(4) in respect of the International Financial Reporting Standards, in respect of each company, including JCI Limited, required to be audited;

6.1.2 convene an Annual General Meeting on the basis required by Section 61(7) of the Act for the approval of the abovementioned Group Annual Audited Financial Statements fully compliant with Section 30 (1); (2) and (4) of the Companies Act No 71 of 2008 and Regulation 27(4) for the financial years ending 31 March 2011, 31 March 2012, 31 March 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017and 30 June 2018; and to

6.1.3 submit as proof to the Commission (i) the Notice of Annual General Meeting; (ii) the list of the shareholders to whom the invitation was send; (iii) a certified copy of the Memorandum of Incorporation outlining the required quorum for the meeting; (iv) a certified copy of the attendance list; (v) the approved Group Annual Audited Financial Statements referred to in 6.1.2 above and (vi) the draft minutes of the Annual General Meeting held **before or on 28 November 2018**.

6.2 It is also recommended that Commissioner approve that:

6.2.1 this report be published on the Commission's website (http://www.cipc.co.za/za/) as provided for in Section 170 (2) (a); and

6.2.2 the complainant, Mr David John Smyth as well as the Board of Directors of JCI Limited be provided with a copy of this report as per the requirements in Section 170(2)(b) of the Act.

Appointed Inspector: Lana van Zyl

Date: 4 September 2018

Annexure "A"

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 137.1

About this Notice

- This notice is issued in terms of section 169 of the Companies Act, 2008, and Regulation 135 of the Companies Regulations, 2011.

Notice to Investigate Complaint

Date: 3/04/2017

To: Lana Van Zyl *(Insert name of inspector or investigator)*

From: [X] **The Commission** [ ] **The Takeover Regulation Panel**

Concerning

(Name and Registration Number of Company whose conduct is the subject of the complaint)

Name: JCI Limited

Registration No: ***1894/000854/06***

On 9th March 2017, the complainant filed a complaint against the company named above to the Companies Commission.

The Companies Commission, or the Takeover Regulation Panel, as the case may be, directs you, in terms of section 169(1)(c) to investigate the complaint as quickly as practicable.

Name and Title of person signing on behalf of the Commission or Panel:

Authorised Signature:

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Annexure "D"

Companies and Intellectual Property Commission
Republic of South Africa

Form CoR 139.1

About this Notice

- This form is issued in terms of section 171 of the Companies Act, 2008, and Regulation 139 of the Companies Regulations, 2011.
- **You have the right within 15 business days to apply in terms of section 172, for an order confirming, modifying or setting aside al or part of this Notice. If the Notice was issued by the Commission, an application must be made to the Companies Tribunal in Form CTR 142. If this Notice was issued by the Takeover Regulation Panel, an application may be made to the Takeover Special Committee.**
- A Compliance Notice remains in force until it is set aside on review, or until the issuing authority later issues a compliance certificate in the matter.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

Compliance Notice

Date: 4 **September 2018**

To:
(Insert name and registration number of company, or name and identity number of individual)

Name: Board of Directors, i.e. Messrs Peter H Gray; Denis M P Shepstone Daly and Mr P R Suter of **JCI Limited** and **the JIC Limited**

Reg/ID No: **1894 / 000854 / 06**

From: [X] **The Commission** [ ] **The Takeover Regulation Panel**

The Commission, or the Takeover Regulation Panel, as the case may be, believes on reasonable grounds that the company named above has contravened the Companies Act, 2008. In particular, the Commission states that the company has failed to comply with Section 30 (1); (2) and (4) and Regulation 27(4). Specifically:

(Insert details of the nature and extent of the conduct that is the subject of this Notice)

PLEASE SEE ATTACHED ANNEXURE"1"

You are required to take the steps set out in the attached statement to bring the company's conduct into compliance with the Act.

Failure to comply with this Notice may result in any of the following consequences:

(a) prosecution in terms of section 214 (3) of the offence of failing to satisfy a compliance Notice, the maximum penalty for which is a fine or 12 months imprisonment;

(b) imposition of an administrative fine, in terms of section 171 (7)(a).

If this notice requires the company to file overdue annual returns, failure to comply may result in the deregistration of the company in terms of section 80 to 82.

Any person who is repeatedly guilty of an offense in terms of the Act, including the offence of failure to satisfy a compliance notice, may be placed on probation as a director, or declared a delinquent director, and disqualified from serving as a director, in terms of section 162.

Name and Title of person signing on behalf of the Commission or Panel:

A.L. KNITTEL FOR COMMISSIONER CIPC

Authorised Signature: 2018/9/4

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

Companies and Intellectual Property Commission
Republic of South Africa

Annexure "1"

STATEMENT TO BRING THE CONDUCT OF THE BOARD OF DIRECTORS OF JCI LIMITED AND JCI LIMITED INTO COMPLIANCE WITH THE COMPANIES ACT NO.71 OF 2008 ("ACT")

The Board of Directors of JCI Limited and JCI Limited, a public company, have not prepared or provided the Inspector with the Annual Audited Financial Statements for the years 2011 to 2016 and the Board of Directors of JCI Limited and JCI Limited have consequently breached Section 30 (1); (2) and (4) of the Companies Act. JCI Limited failed to publish its audited Financial Statements for each of its 2011, 2012, 2013, 2014, 2015, 2016 and 17 financial years, either in hard copy or on its website. Regulation 27 deals with the Financial Reporting Standards. The Board of Directors of JCI Limited and JCI Limited have consequently also breached Regulation 27(4) as the mentioned Annual Audited Financial Statements have not been prepared in respect of the International Financial Reporting Standards. The auditing of the 2018 Financial Statements will for the sake of completeness also be required to be submitted to the Commission upon finalization.

The Board of Directors of JCI Limited and JCI Limited have also breached the Section 61 (7) (b) as the Annual General Meetings were not held timeously.

The following is required from the Board of Director of JCI Limited and JCI Limited within 60 business days from the date of the Notice to:

(1) Submit to the Commission the Group Annual Audited Financial Statements for the years ending 31 March 2011, 31 March 2012, 31 March 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017 and June 2018, fully compliant with Section 30 (1); (2) and (4) of the Companies Act No 71 of 2008, as amended as well as Regulation 27(4) in respect of the International Financial Reporting Standards, in respect of each company, including JCI Limited, required to be audited;

(2) Convene an Annual General Meeting on the basis required by Section 61(7) of the Act for the approval of the above mentioned Group Annual Audited Financial Statements fully compliant with Section 30 (1); (2) and (4) of the Companies Act No 71 of 2008 and Regulation 27(4) for the financial years ending 31 March 2011, 31 March 2012, 31 March 2013, 30 June 2014, 30 June 2015, 30 June 2016, 30 June 2017 and 30 June 2018; and to

(3) Submit as proof to the Commission (i) the Notice of Annual General Meeting; (ii) the list of the shareholders to whom the invitation was send; (iii) a certified copy of the Memorandum of Incorporation outlining the required quorum for the meeting; (iv) a certified copy of the attendance list; (v) the approved Group Annual Audited Financial Statements referred to in (2) above and (vi) the draft minutes of the Annual General Meeting held **before or on 28 November 2018**.