



THE ROLE AND RESPONSIBILITIES OF THE COMPANY SECRETARY - FOUNDATIONAL LEVEL

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Commented [SB1]: Section 40: Consideration for shares: Wording amendments to replace references to "trust" with stakeholder" And Section 1: Securities The definition of "securities" has now been amended to only include shares and debentures with the deletion of "or other instruments" from the definition.

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Commented [SB2]: Section 77: Liability of directors and prescribed officers: There is now the possibility, on good cause shown that legal action can be instituted against a director to recover any loss, damages or costs incurred by a company due to the individual allegedly having failed to comply with the relevant requirements of the Companies Act, more than three years after the act or omission that gave rise to the liability. Technically, therefore, liability is now an indefinite possibility faced by directors.

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King V™ vs and King IV™

COR FORMS AND OTHER INFORMATION (ATTACHED FOLDERS)

CIPC NOTICES

Source: https://www.cipc.co.za/?page_id=2911

Evolution of the 1974 Act

Corporate Law Reform initiated by DTI in 2005



Corporate Law Amendment Act 14, December 2007



New Companies Act:71 of 2008 signed on 8 April 2009



Companies Amendment Bill Published on 19th November 2010



2nd set of Draft Regulations published on 29th November 2010



Companies Amendment Act, no 3 of 2011 (Gazetted 26th April 2011)



Companies Regulation 2011 (Gazetted 26 April 2011)



Implementation date announced May: 1 May 2011

General Law Amendment Act (December 2022)

Companies Act Amendments Regulations (May 2023)

Companies Amendment Bill and Second Amendment

Bill (signed into law 29 August 2023)

Companies Amendment Act No. 16 & 17 of 2024

(signed into law 27 December 2024)

CoR- Certificate of Regulation

CIPC

Rory Voller – Commissioner

Role

- Regulation of entities
- Disclosure
- Promotion
- Effective (efficient enforcement of Act)
- Monitoring compliance
- Licensing business practitioners
- Oversight of ind. Bodies
- Report/Research/Advice

Companies Tribunal (CTR)

- Voluntary dispute resolution
- Review Administrative Decisions CIPC
- Decisions binding on CIPC (subject to review/appeal by/to a Court)
- Cost effective/efficient
- Report Irregular Activities
- Enforcement

Take Over Regulation Panel

TRP

(Old Securities Panel)

- Prescribes rules
- Fundamental Transactions (Affected)

Financial Reporting Standards Council

FRS

- Advising FRS

STRUCTURE OF THE COMPANIES ACT 2008:-

CHAPTER NO.	CONTENT
1	Interpretation, purpose and application
2	Formation, administration and dissolution of companies
3	Enhanced accountability and transparency
4	Public offering of company securities
5	Fundamental transactions, takeovers and offers
6	Business Rescue and compromise with creditors
7	Remedies and Enforcements
8	Regulatory agencies and administration of Act
9	Offences, miscellaneous matters and general provisions

SCHEDULE NO.	CONTENT
1	Provisions concerning non-profit companies
2	Conversions of close corporations to companies
3	Amendment of Laws
4	Legislation to be enforced by commission
5	Transitional arrangements

Amendments to the Companies Act, No 71 of 2008 partly promulgated – what are the practical implications?

On 27 December 2024, certain sections of the Companies Amendment Act, No 16 of 2024 as well as the entire Companies Amendment Act, No 17 of 2024 were published in the Government Gazette, making these amendments to the Companies Act of 2008 (“the Companies Act”) immediately effective.

Provisions that are effective as of 27 December 2024:

All provisions of the Companies Amendment Act, No 17 of 2024 have become effective. In short, this means that there is now the possibility, on good cause shown that:

- o legal action can be instituted against a director to recover any loss, damages or costs incurred by a company due to the individual allegedly having failed to comply with the relevant requirements of the Companies Act, **more than three years** after the act or omission that gave rise to the liability. Technically, therefore, liability is now an indefinite possibility faced by directors; and
- o an application can be brought to have a director declared delinquent or under probation, **more than five years** (previously two years) after the individual has been a director of the particular company. Again, the potential risk for those serving as directors is potentially indefinite.

Not all the provisions of the Companies Amendment Act, No 16 of 2024 came into effect as the finalisation of regulations is awaited. Below is a summarised version, in plain language, of the provisions that did become effective (section numbers quoted refer to the Companies Act of 2008):

- o **Section 1:** The definition of “securities” has now been amended to only include shares and debentures with the deletion of “or other instruments” from the definition.
- o **Section 16:** Amendments to a memorandum of incorporation will only take effect 10 business days following filing thereof unless rejected by the CIPC within that period.
- o **Section 40:** Wording amendments to replace references to “trust” with “stakeholder”.
- o **Section 45:** The heading is amended to refer to “financial assistance” only and holding companies will no longer be required to comply with the requirements of section 45 where financial assistance is provided to subsidiaries.
- o **Section 48:** Confirmed that a pro rata share buy back from all shareholders will not require shareholders’ approval, even if shares are also acquired from directors and/or prescribed officers and/or related persons to such individuals.
- o **Section 61:** The AGM notice will in future have to include items relating to the presentation of the social and ethics report and the remuneration report as well as the appointment of a social and ethics committee.
- o **Section 72:** In short, the more significant implication is that members of the social and ethical committee of a public company or state-owned

company will now be appointed/elected (similar to that of the audit committee) by shareholders at the AGM on an annual basis. Members of the social and ethics committee of any other company will continue to be appointed by the board of directors of the company, but such appointment must now also be done on an annual basis.

- **Section 90:** Confirmed that the appointment of auditors by shareholders as required by the Companies Act may be done at any shareholders' meeting (as opposed to only the AGM), with the effect that such resolution can now also be dealt with by way of a written resolution as contemplated in section 60 of the Act.
- **Section 95:** Confirmed that the definition of an employee share scheme now also includes reference to a scheme in terms of which shares can be purchased by the company for purposes of the scheme.
- **Section 135:** The rights of landlords in the event of a tenant being in business rescue have now been extended as far as payment of public utility services are concerned, with such payments being classified as post-commencement financing with preferential treatment.
- **Section 160:** An administrative order to change the name of a company must now indicate a date by which compliance is required in the absence of which the CIPC may on application change the name of the company to reflect its registration number.
- **Section 167:** References to entities other than the Companies Tribunal have been deleted which means that the provisions of this section will only apply if the Companies Tribunal had been involved in resolving a dispute between parties.
- **Section 194:** The powers of the chairperson of the Companies Tribunal have now been extended to include several significant matters, such as the appointment of a chief operating officer.
- **Section 204:** The Financial Reporting Standards Council will in future be empowered to issue financial reporting pronouncements as part of the fulfilment of its functions.

Provisions that are NOT yet effective

As is obvious from the afore going, all provisions of the Companies Amendment Act, No 17 of 2024 have become effective. As far as the Companies Amendment Act, No 16 of 2024 are concerned, the provisions that are not yet effective can be summarised, in plain language, as follows:

- **Section 26:** A third-party obtaining access to the annual financial statements of any company that is required by law to audit its annual financial statements, in addition to public companies and state-owned companies.
- **Section 30:** Amendments to the wording of section 30 relating to prescribed officers as well as the new requirements relating to the publication and approval of a remuneration report by shareholders, including the inclusion of specific information such as the pay gap ratio, etc.
- **Section 33:** Amendments to the wording of this section to clarify the requirement that a public company, a state-owned company and any other company with the relevant public interest score is required to file a copy of the latest annual financial

statements together with the annual return.

- **Section 38:** Validation of irregular creation, allotment or issuing of shares by a court of law
- **Section 72(12):** The new requirement for a report by the social and ethics report that meets the regulatory requirements to be submitted to shareholders, either at the AGM (public and state-owned company) or at a shareholders' meeting, alternatively by way of written resolution (any other company required to have a social and ethics committee).
- **Section 118:** Amendments to the description of private companies involved in a transaction to which certain provisions of the Companies Act as well as the Takeover Regulations will apply, effectively amending the definition of "regulated companies" as per section 117(1)(i).
- **Section 166:** Limiting the ability to mediate or arbitrate a dispute between parties in terms of the Companies Act to the Companies Tribunal by removing references to "an accredited entity or any other person".
- **Section 195:** The ability of the B-BBEE Commission to refer certain matters to the Companies Tribunal.

That's it for now, folks, but "watch this space"!



OLD ACT VS NEW ACT TABLE SUMMARY

SUBJECT MATTER	COMPANIES ACT, 1973	COMPANIES ACT, 2008 (IMPLEMENTED ON 1 MAY 2011)
Names	No entity could be registered unless name approved, via a Form CM 5	No need to have the name approved prior to Company registration. – May register a PC company with the name as Registration No. & South Africa (suffix) by indicating same on Cor 14.1 (NOI). (E-file) Name can be reserved on formation of entity – CoR 14.1 Annexure B.
	Name reservation complete form CM5, valid for a period of 2 months Extended for a further period of 1 month via a Form CM 6	Reserving Name: <ul style="list-style-type: none"> Form Cor 9.1 (E-file) accompanied by relevant documentation of evidence if required - See Regulation 8 and 9. If approved, Cor 9.4 issued by CIPC. Name reserved for 6 months. <u>Extend for periods of 60 business days at a time, by</u> <ul style="list-style-type: none"> Form Cor 9.2 (E-File) and comparable facts where evidence required initially to reserve name. <p>* Reserved name transferable to another on Form CoR11.1 (E-File) and comparable facts where evidence is initially required to reserve a name.</p>
	Registration of translated or shorten name – complete CM 7 (and special resolution) once CM5 approved	Shortened/Translated names no longer allowed. Companies currently trading under shortened names may register names as business names in terms of the Business Names Act which falls under the Consumer Protection Act.(CPA) Trading names w.e.f. 1 May 2011, no longer allowed (unless already utilised for a period of 1 year prior to introduction of CPA). Trading names, must also register as detailed above and to ensure exclusivity of use, suggest registration of trade name as a defensive name with CIPC.
	Register defensive name – complete CM8 once CM5 approved (valid for 2 years)	Defensive name : : <ul style="list-style-type: none"> Form CoR 10.1 (E-File) evidence of a director and material interest in the name must accompany the form. Registration valid for 2 years.
	Renewal defensive name for further period of 1 year – lodge CM8A	Renewal of defensive name Form CoR 10.2 (E-File) evidence from a director and material interest in the name must accompany form. (i.e., letter from MD on company's letterhead) <ul style="list-style-type: none"> Registration valid for 2 years. Ownership of reserved or defensive name now transferable via a Form CoR11.1.
	Registered name must be displayed ‘in a conspicuous position’ at the registered office & place of business Categories of entities:- <ol style="list-style-type: none"> 1. Personal liability – “INC” 2. Private company – “(Pty) Ltd” 3. Public company – “Ltd” 5. Non-profit company – “S21” 	If a profit company is to be registered by its no. only (i.e., on incorporation only) the number must be followed by (“South Africa”).NB not allowed for NPC’s. If MOI contains any special condition or prohibits amendment of provision of MOI, the name must be followed by (“ RF ”)(i.e. ring-fenced entities). Names end with expression appropriate for category of entities, namely :-

	<p>6. External companies/branch companies 7. Close Corporations</p>	<ul style="list-style-type: none"> • 1. Personal liability – “INC” • 2. Private company – “(Pty) Ltd” • 3. Public company – “Ltd” • 4. State owned company – “SOC” • 5. Non-profit company – “NPC” • 6. External profit or non-profit companies. • 7. Foreign Domesticated Companies
	Name and registration number must appear in “legible characters” on all notices, official documents including letterheads, cheques, orders for money, goods signed on behalf of the company in letterheads, delivery notes, invoices, receipts and letters of credit	Words comprising name expressed using alphabet used for writing in official languages or numbers expressed in words, Arabic or Roman numerals.
	Names must not mislead the public. Only certain symbols are allowed. No religious names, no misspelling, words other than in English or Afrikaans language, punctuation; names unrelated to the stated main object of the company; and certain prohibited names	<p>(Comprise words in any language, used or contrived, together with letters, numbers; punctuation marks, symbols: +; &; #; %; =; @; (implemented May 2014) or round brackets provided not same or similar to:</p> <ol style="list-style-type: none"> 1. Name of another company (incl external co), cc; co-operative unless part of same group; 2. Name registered to Business Names Act, Consumer Protection Act 3. Registered trademark; 4. Mark, word, expression restricted to Merchandise Marks Act; 5. Mislead person that part of another entity, an organ of state, persons with particular educational designation or regulated, part of foreign state or international organisation.
Types of Companies	<p>2 Types of Companies with share capital –</p> <ul style="list-style-type: none"> • public company • private company; • incorporated company; 	<p>Types of companies distinguishable between purpose and not share capital, comprising for profit (PC) and not for profit entities (NPC)</p> <ul style="list-style-type: none"> • PC - incorporated for purposes of financial gain for its shareholders - 4 types of profit companies: <ul style="list-style-type: none"> ❖ State owned (SOC) Ltd - company that falls within the meaning of ‘state owned enterprises’ under the Public Finance Management Act or owned by Municipalities in terms of the Municipal Systems Act; ❖ Personal liability (“Incorporated or Inc”) – the directors and past directors are personally, jointly, and severally liable for any debts and liabilities contracted during their period of office. Its MOI states it is a PLC; ❖ Public (“Limited or Ltd”) – the MOI does not prohibit the offer of securities to the public, nor restrict the transferability of its shares and the company is not state owned or a personal liability company. ❖ Private (“Proprietary Limited or (Pty) Ltd”) – MOI prohibit the offer of securities to the public, restricts the transferability of securities, ❖ Special kind of private company – (RF) company - MOI containing any special conditions applicable to the company and any special requirement for the amendment of such special condition or prohibit the amendment of any particular provision of the MOI, the name of the company must be followed by the expression “(RF)” used – <ul style="list-style-type: none"> ➢ where companies are set up for a specific purpose, to act an investment company or the holder of shares, ➢ where the object and purpose of the company is limited and the powers of directors is restricted. RF

	<ul style="list-style-type: none"> External companies/ branch Companies 	<p>companies must be administered and governed the same as a private company.</p> <p>External companies/ branch companies Foreign Domesticated Companies Foreign companies whose registrations are transferred to RSA.</p>
	<p>Close corporations – lodge Form CK7 (name reservation) and thereafter Form CK 1 (founding statement); amendment thereto via Form CK 2 (amended founding statement)</p>	<p>No new CC registrations permissible and existing companies will not be able to convert into CC's. CC's will be allowed to voluntarily convert to private companies by filing Notice of conversion CoR18.1 together with formation documentation, i.e., MOI; NOI etc. accompanied by written statement of consent (special resolution by members) holding in aggregate 75% of the members interest, and the payment of a filing fee. Upon registration CIPC will issue a Form CoR 18.3 notice of conversion.</p> <p>CC's not converted will continue to exist indefinitely until they are deregistered or dissolved. The current Close Corporations Act as amended and the new Companies Act will exist concurrently and CC's will be required to comply with the provisions of both Acts. Public Interest Score to determine whether CC to be audited or not.</p>
<p>Company formation / incorporation</p>	<p>Preparation and lodgement of forms: Forms :-</p> <ul style="list-style-type: none"> CM5 (Application to reserve a name) CM 22; CM 27A (if secretary) CM 29; CM 31; CM 46; CM 47; Memorandum and Articles of Association (choice of adopting either Table A or Table B of Companies Act, with options of inclusions or omissions) 	<p>Every person has the right to incorporate a profit company by completing and signing in person or proxy (subject to a POA) –</p> <ul style="list-style-type: none"> CoR 15.1 (Standard Form Memorandum of Incorporation) accompanied by either of the annexures A, B, C, D or E or as allowed by Regulation 15(1), i.e., a unique MOI. filing MOI with “NOI” (Notice of Incorporation) Form CoR 14.1, accompanied by either Annexures A – D (where applicable) . The MOI is a living statutory document, as amended from time to time, which sets out the rights, duties and responsibilities of shareholders, directors and others within and in relation to the to a company and other matters by which the company is incorporated, or an existing company is “structured and governed.” <p>The Act imposes certain specific requirements on the content of a MOI as necessary to protect the interest of shareholders and provides a number of default provisions which companies may accept or alter as they wish to meet their needs and serve their interest. In addition, companies are also allowed to add to the required default provisions to address matters not addressed by the Act itself.</p> <p>Upon registration of entity CIPC will issue a Form CoR 14.3 (Certificate of Incorporation).</p> <ul style="list-style-type: none"> Application by foreign Company to transfer registration to the Republic. CoR 17.1, i.e., known as a Foreign Domesticated Company. Notice of Foreign registration of an RSA entity to a foreign jurisdiction Form CoR 40.2 (via Special Resolution) (i.e., RSA registered entity may now transfer its registration to another jurisdiction.) Registration of External company (CoR 20.1; Annexure A; Cor 21.1; and CoR 21.2(appointment of RSA representative); MOI and NOI of head office or parent company, translated if necessary)
	<p>Pre-incorporation contracts The Articles must contain as its object the ratification and adoption of a pre-incorporation contract</p>	<p>Agreements entered into the name of a company, contemplated to be formed and not yet in existence are valid. Within 3 months after the company is incorporated, the company must ratify in full, partially, conditionally or reject any pre-incorporation contract or other action done in its name or on its behalf. If the company fails within the 3 months to ratify or reject the pre-incorporation contract, the company will be deemed to have ratified that agreement or action. Notify CIPC on CoR 35.1/CoR 35.2.</p>

	Minutes, share certificates, register, to be maintained and kept at the registered office of the company.	Maintain permanent documentation indefinitely (other documentation for a minimum of 7 years) at the registered office the MOI, registration certificate, register of directors, securities register, copies of all reports presented at the AGM, annual financial statements and accounting records; notices and minutes of all shareholders meetings, all resolutions and every document made available to shareholder in respect of such resolution; copies of written communications sent by the company to all holders of security; minutes of all meetings and resolutions of directors, directors committees or audit committees.
Registered office	Register change of registered office and postal address, via Form CM 22. Should records not be retained at registered office, Form CM 21 to be filed.	All companies must have a registered office, i.e. The offices from which it is conducting its principal business. Must notify change in registered office by filing CoR 21.1 , indicating the date of change which must be a date after the date on which the notice is filed. If Company records are not kept at its registered office, a Notice of Location of Company records is to be filed on CoR 22 .
Company records	Statutory books and accounts be kept at registered office	All documents, accounts, books or information required to be kept must be in or be capable to be reduced to writing and be kept at the registered office. Records accessible at or from the companies registered office Shareholders allowed free access to all documentation except for the management accounts, i.e., accounting records, minutes of meetings of directors, committees. Members of the public have the same right, except for management accounts for private entities, however, may be charged a maximum fee of R100. In any event the public or shareholder may exercise their right to access company information via a Form CoR 24 or may make an application to the Human Rights Commissioner via the Promotion of Access to Information Act. POPI Act of 2013 requirements to be considered.
Directors	Appointment and Change in directors – CM 27 signed but not lodged CM 29 completed, signed and lodged Prepare director resolution Dependent on Articles, the Board of directors themselves or shareholders may appoint directors.	The business and affairs of the company are managed by or under the direction of its Board, which has the authority to exercise the powers and perform the functions of the Board. Shareholders of private companies are required to elect/appoint at least 50% of the directors to the Board. The Board of directors must comprise: - at least one director for private companies; and - at least 3 directors for public companies and NPC's CoR 39 to be filed in this regard. Must maintain Register of Directors that must contain in respect of each director, his full name, ID no, nationality and passport no, occupation, date of most recent appointment as director, name and registration no of every other company (incl foreign company) which he is a director and wrt foreign company the nationality of the company. Disclosure of interests – Form CoR 36.4 required for personal interests as well as related or inter-related interests (for directors and prescribed officers) i.e. In addition, regulation provides that must include the name & registration no of any company of which a person related to the director is a director or prescribed officer. The address of that director, and where the company is to have an audit committee, the professional qualifications and previous experience of the director. No provision in New Act to include names of directors on letterheads.
	Resignation of Director in terms of Articles, letter of resignation, prepare and lodge Form CM 29 with CIPRO. Removal of Director in terms of Articles, or if silent in terms of Act S220; special 28-day notice required, shareholders meeting	Every company must file a notice within 10 business days after a person becomes or ceases to be a director of the company - Form CoR 39 . Director removed by ordinary resolution adopted at shareholders meeting, provided director receives prior notice of the meeting and

	<p>to be held, legal representation allowed, if resolved to remove director, Form CM 29 to be lodged.</p>	<p>given reasonable opportunity to make presentations before vote at Shareholders meeting. Disqualified as director if court has prohibited person from being a director or declared the person delinquent or unless exempted by court, where the person:</p> <ul style="list-style-type: none"> • is an un-rehabilitated insolvent; • is prohibited from being a director; • has been removed on grounds of misconduct involving dishonesty; been convicted and imprisoned without the option of a fine for theft, fraud, forgery, perjury or an offence involving fraud, misrepresentation or dishonesty. • Director disqualification ends 5 years after removal from office. • The stakeholder has the right to bring an application to court to declare the director delinquent or placed under probation. <p>Declaration of delinquency either subsists for the lifetime of the person declared or for 7 years.</p>
	<p>Directors' duties arise under the common law to act in good faith with care and skill, to exercise his powers for the good of the company and to avoid a conflict of interest.</p> <p>Directors have a duty to declare any personal financial interest or if the director knows of a related person that has an interest in a matter before the Board. The director has a duty to declare the interest in writing, to disclose all information in his possession. Director may participate in board deliberations, should Board members approve, however may not vote on that matter under any circumstances.</p>	<p>Codification of the fundamental common law requirements in relation to the duties of directors and increased exposure to director personal liability. When acting in the capacity as director must: act in good faith and for a proper purpose; In the best interest of the company; and with a degree of care, skill and diligence that may be reasonably be expected of a person carrying out the same function in relation to the company as those carried out by the director – (an objective test, that the director must be adequately qualified and experienced for the position) and having the general knowledge, skill and experience of that director – (a subjective test). Personal financial interest. Directors have a duty to declare any personal financial interest or if the director knows of a related person that has an interest in a matter before the Board. Director has a duty to declare the interest in writing, to disclose all information in his possession and cannot participate in board deliberations (must recuse himself from the meeting) or vote on that matter under any circumstances, nor oversee or carry out the transaction should it be approved. Regular Board evaluations to be undertaken. Continual professional development/training to be undertaken.</p>
		<p>Carve out – Business Judgement Rule A new provision that effectively provides a carve out to an allegation of misconduct on the part of the director. Rule effectively deems a director to have acted in the company's best interest and to have performed his function with the necessary care, skill and diligence, if the director had taken reasonable diligent steps to become informed of the matter, either had no material personal financial interest in the matter or had disclosed such personal financial interest or had no reasonable basis to know that a related person had a financial interest in the matter and made the decision having a rational basis for believing and did believe that the decision was in the best interest of the company. <u>3 requirements must be present:</u> - the absence of a conflict of interest or the declaration of such interest, - the taking of all reasonable steps by the director to be informed of the transaction, and - Director acting rationally in respect of the matter. Director when making his decision is entitled to rely on competent employees, legal counsel, accountants or other professional advisors, Board committees or persons to whom the Board reasonably delegated authority to perform</p>

		certain functions, who have the skills or expertise that the director believes are matters within the persons professional or expert confidence and any reports, opinions, financial statements prepared by such persons.
		<p>Director liable to the company for loss, damage and cost pursuant to breaches of duties, provisions of the Act and provisions of the MOI. Liable to company for loss, damage or cost pursuant to:</p> <ul style="list-style-type: none"> • acquiescing in reckless trading by company; • unauthorised act on behalf of the company; • being party to acts or omissions of company to defraud creditors, employees, shareholders or other fraudulent act of the company; • signing or approving false or misleading financial statement or prospectus; or failing to vote against certain acts prohibited by the Act. <p>Knowledge a requirement of each of the above, Director acted or made the decision “knowingly” there was a lack of authority, or the information was false, misleading or untrue, or the company was conducting business negligently, fraudulently or the company was trading under insolvent circumstances.</p> <p>These acts are also offences punishable by fine of imprisonment, not exceeding 10 years or both.</p> <p>Extension of liability - Section 218 “any person who contravenes any provision of this Act is liable to any person for any loss or damage suffered by that person as a result of the contravention”</p>
Officers and Public Officers	<p>Company Secretary – to be appointed in public companies Board must appoint Secretary who must accept appointment. A Form CM 27A must be completed, signed and lodged. Board resolution required approving appointment. Resignation into letter of resignation, A Form CM 27A must be completed, signed and lodged. Board resolution required noting resignation.</p>	<p>Only a public company and SOC must appoint an audit committee and company secretary. The company secretary must be appointed by the Board and must be a permanent resident of the republic and remain so while serving in the capacity. Appointed by incorporators or within 40 days after incorporation by the directors or by ordinary resolution. Within 60 days of vacancy arising, Board must fill the vacancy with person with requisite knowledge and experience. Notice of appointment or ceasing to act in the capacity, complete CoR 44.</p>
	<p><u>Auditors</u> Every company must appoint an auditor. Appointment valid until next AGM where renewal of appointment is confirmed for the next year Change in Auditors CM 31 completed, lodged and necessary resolution</p>	<p>Only a public company and SOC must appoint an auditor. As well as those entities which elect to be audited or require to be audited in terms of the PIS. Registered auditors who are independent of the company, appointed on incorporation or by Board within 40 days, appointed annually at the AGM subject to approval of the Audit committee who determine the Auditors mandate, same individual may not serve as designated auditor for more than 5 years. Annual notice of appointment, complete Form CoR 44 (accompanied by proof of resignation from resigning auditor and proof of appointment of new auditor). Other companies may elect to be audited or independently reviewed, see notes under Financials below. Public interest score undertaken annually to be determining factor</p>
Financials	<p>Financial Year End On formation, company must designate its financial year-end Can change financial year-end to no more than 6 months earlier or not more than 6 months later than its existing financial year-end. Application be made before financial year-end on CM 32 complete and lodge supported by resolution, Allowed for the use of a Form CM 17 (application for extension of time) which enabled entities to back date their year-end changes.</p>	<p>Each company must have a financial year end on a date set out in the company’s notice of Incorporation. Board can change financial year-end at any time by filing Form CoR 25, but can do so only once per financial year, the new year end must be later than the date on which the notice is filed, the new date may not result in the financial year ending more than 15 months after the preceding year.</p> <p>No backdating of changes in year ends allowed.</p>
		Each company must keep accurate and complete accounting records in one of the official languages. Accounting records must include: a register of the company’s assets and liabilities, a record of any property

Commented [S4]: Section 90: Appointment of auditor
The appointment of auditors by shareholders may be done at any shareholders’ meeting (as opposed to only the AGM), with the effect that such resolution can now also be dealt with by way of a written resolution as set out in section 60 of the Act.

		<p>held by the company, a record of all liabilities and obligations, where the company trades than statements of annual stocktaking for purposes of determining the value of stock, record of the company's revenue and expenditure. The accounting records must be kept in a manner that provides adequate protection against falsification, theft, loss, damage, or destruction.</p> <p>Public companies and companies that hold assets in a fiduciary capacity for broad group of persons that not related to the company, financials must be audited. Other companies' financials must be audited where prescribed by minister, or financials must be independently compiled and reported (subject to threshold, (being a 3 year aggregate), or independently reviewed (subject to threshold), (being a 3 year aggregate), or audited voluntarily or be independently reviewed unless exempt either from audit or independent review (one person holds all the issued security or every security holder is also a director).</p>
<p>Annual General Meetings</p>	<p>Section 179 All companies, including S21 had to hold an annual general meeting. Substantial same requirements as new act except for director's fees having to be approved by a Special Resolution at AGM and Audit Committee members being approved by the shareholders at the AGM.</p>	<p>Section 61(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.</p> <p>Section 61(8) A meeting convened in terms of subsection (7) must, at a minimum, provide for the following business to be transacted: (a) Presentation of— (i) the directors' report; (ii) audited financial statements for the immediately preceding financial year; and (iii) an audit committee report; (b) election of directors, to the extent required by this Act or the company's Memorandum of Incorporation; (c) appointment of— (i) an auditor for the ensuing financial year; and (ii) an audit committee; and (iii) a social and ethics committee (d) any matters raised by shareholders, with or without advance notice to the company.</p> <p>Section 61(9) Except to the extent that the Memorandum of Incorporation of a company provides otherwise— (a) the board of the company may determine the location for any shareholders meeting of the company; and (b) a shareholders meeting of the company may be held in the Republic or in any foreign country.</p> <p>Section 61(10) Every shareholders meeting of a public company must be reasonably accessible within the Republic for electronic participation by shareholders in the manner contemplated in section 63(2), irrespective of whether the meeting is held in the Republic or elsewhere. <i>NB.A public company must hold an AGM. Any other entity may elect to hold an AGM and if so, the above clauses must be inserted into the MOI as well as the required period of notice.</i> Note – 1. The mailing of the notice & AFS by registered mail is not feasible for a listed company and this article will soon be amended. 2. When preparing the notice bear in mind that 50% of the directors must be appointed by shareholders when</p>

Commented [S5]: Section 61: The AGM notice will in future have to include items relating to the presentation of the social and ethics report and the remuneration report as well as the appointment of a social and ethics committee

		<i>considering the re-election and appointment of additional directors.</i>
	<p>Annual returns Each company and close corporation (excluding S21 entities) is required to lodge an annual return by no later than the end of the month which follows its anniversary month of incorporation. Cost calculated on turnover. Penalty of R150 payable if not attended to timeously. If not lodged within 6 months of the due date, company/close corporation to be deregistered by CIPRO</p>	<p>All companies (including external companies) and close corporations are required by law to electronically file their annual returns with CIPC. An annual return is a statutory return in terms of the Companies and Close Corporations Acts and therefore MUST be complied with. Failure to do so will result in the Commission assuming that the company and/or close corporation is not doing business or is not intending on doing business in the near future. Non-compliance with annual returns may lead to deregistration, which has the effect that the juristic personality is withdrawn and the company or close corporation ceases to exist. Filing of annual returns. The Act makes a distinction between local companies and external companies' annual returns and the content of each differs. There will therefore be three annual return lodgement avenues namely for local companies, external companies and close corporations, i.e., Forms CoR 30.1 – 30.3 (inclusive) however these forms are not being utilised and filing of annual returns must be attended to electronically.</p> <p>Filing of Annual Returns Annual returns for local and external companies must be filed within 30 business days from the anniversary date of incorporation. If filing later than the 30 business days an increased fee is payable up until the company is deregistered due to non-compliance. No manual lodgement of annual returns allowed. NPC's required to submit annual returns. Compulsory for SOC's and public companies to submit their AFS together with their annual returns. W.e.f. 1 March 2013, all entities requiring an audit are also required to submit their AFS; all other entities are required to submit a financial supplement; however, this has not as yet been enforced. Regulation 176 deals with non-disclosure by CIPC of restricted information.</p>
Shares	<p>Transfer of Shares Transfer deed or CM 42 to be completed, old share certificate cancelled, new share certificate issued and resolution to be prepared approving transaction. Share register to be written up. STT payable, electronically to SARS.</p>	<p>Distinguish between 2 types of security registration and transfer.</p> <ol style="list-style-type: none"> 1. Certificated – evidenced title or 2. Un-certificated – company does not issue certificates evidencing title. <p>On every transfer of shares, the company must record in the share register the name and address of the transferee, the description of the securities or interest transferred, the date of the transfer and the value of any consideration still to be received for the shares. Transfer deeds are utilised to record transactions. Every company must establish and maintain a securities register, which details the number of securities issued, the names and address of the persons to whom issued, the number of securities issued, the securities held in trust and the securities whose transfer has been restricted (noting of interest). Each class of shares must be distinguished by an appropriate numbering system. The securities register is prima facie evidence of the facts recorded.</p>
	<p>Security Transfer Tax – 0.025 cents for every R 10 or part thereof the value or consideration. Payable within 2 months. Late payment penalty of 10% and interest at 15%. STT payable where the consideration price of the sale of shares exceeds R 40 000,00</p>	<p>Security Transfer Tax remains unchanged except that some exemptions are under investigation by SARS (i.e., Section 45 of Income Tax Act group restructures)</p>
		<p>Share Certificate Share certificate must state the name of the issuing company, the person to whom issued, the number and class of share and its designation in the series, and state any restriction on the transfer of</p>

		the securities in the case of private entities. The share certificate must be signed by 2 persons authorised by the Board.
	Share Buy Backs. The company's Articles must authorise share buy-backs. Authority to purchase its shares to be authorised by special resolution which authority is to be renewed at each AGM. Form CM 14A to be lodged together with a solvency/liquidity statement signed by all directors.	Section 48: Subject to ordinary shares been held by another, other than subsidiaries of the Company, the Company may acquire its own shares, provided Board authorisation and satisfaction of the solvency and liquidity test. (NB the requirement of a special resolution and authorisation by the MOI are not required, unless buy back of directors shares or related or inter-related parties shares or in excess of 5% of the issued share capital in that particular class) Required - Directors Resolution Solvency and Liquidity Statement
	Allotment of shares Means of raising capital Directors must have authority to allot further shares, which authority is granted to Shareholder resolution (renewed at each AGM) . The Company must have sufficient authorised share capital. Form CM 15 to be completed and lodged within 1 month of date of allotment, otherwise penalty of R150 payable. Resolution approving allotment required, new share certificates prepared and share register updated.	Only authorised shares may be issued; may only issue from within existing classes via a Board Resolution . The MOI must set out the number and classes of shares that the company is authorised to issue, a distinguishing designation for each class as well as the preference rights, limitations and other terms associated with each class. Special resolution required if the issue of shares to a director or related or inter-related party or if issue exceeds 30% of the shares in that particular class. Provided MOI does not provide otherwise, the Board has power to: <ul style="list-style-type: none"> • Increase or decrease the number of authorised shares of any class, or • reclassify any authorised but unissued classified shares, or • classify any unclassified shares which have been authorised but are unissued; or determine or amend the classification of shares, the number of shares of each class and the preference, rights, etc. associated with each class of shares classified or unclassified. No new shares of par value are allowed to be created. If a company has issued all of its authorised share capital of par value, it must first convert it shares into shares of NPV (via Form CoR 31) prior to increasing its authorised share capital and issuing further shares. If a company still has unissued par value shares available it may still issue such shares (at a premium if required) until such time as it no longer has any authorised shares available to issue. Share Employee Schemes to be lodged with CIPC within 20 business days of set up via Form CoR 46.1 and annually reported on to CIPC via Form CoR 46.2
Resolutions	2 types: General and Special	Every resolution of shareholders is an ordinary resolution or a special resolution. Board can propose any Shareholders Resolution and also determine how that resolution is to be decided (at a meeting, by vote or written consent) Any 2 shareholders may propose a resolution concerning any matter they are entitled to exercise voting rights and can also determine how it is to be submitted to shareholders for consideration, whether at special or a general meeting or by round robin. Proposed resolution must be: Expressed with sufficient clarity and be specific and have sufficient explanation to allow a Shareholder to determine whether to participate in the meeting and to seek to influence the outcome of the vote. Where the resolution proposed is unclear, the Shareholder or director may apply to court
	Notice -No less than 21 clear days' notice has been given is required, specifying the general and or special resolution and the reason and effect of the passing thereof. Form of proxy to accompany notice. Form CM 25 required if shortened notice given, must be signed by 95% of	Notice of meeting must be writing and must specify date, time and place of meeting, the purpose of the meeting, include a copy of the proposed resolution to be considered and the percentage of voting right required for resolution to be adopted, and a prominent statement advising shareholder of right to appoint proxy.

Commented [S6]: Section 48: Company or subsidiary acquiring company's shares: A pro rata share buy back from all shareholders will not require shareholders' approval, even if shares are also acquired from directors and/or prescribed officers and/or related persons to such individuals.

	<p>shareholders. Alternatively notice may be completely waived via Form CM 25A, however ALL shareholders must sign this document.</p>	<p>Notice must be delivered to shareholder at least 15 business days before the meeting in the case of public and NPC that has voting members; and 10 business days before meeting to begin in all other case. short notice- meeting could proceed if all persons entitled to exercise voting rights, acknowledge receipt of the notice, are present at the meeting and waive notice of the meeting.</p>
	<p>Quorum and voting requirements General: Articles to specify quorum required for meeting to proceed and majority vote is 50% plus 1 vote. Special: no less than one-fourth of all total votes entitle are present in person or proxy and no less than three fourths of number of members' present vote in favour.</p>	<p>Shareholders meeting cannot begin or a matter be decided until sufficient persons are present at meeting to exercise at least 25% of all voting rights (MOI can specify higher or lower %) and if company has more than 2 shareholders, at least 3 shareholders need to be present. Ordinary resolutions must be approved by 51% of the voting rights exercised in respect of the resolution, however MOI can provide for a higher percentage. The approval threshold for a special resolution is 75%, however MOI can provide for a lower percentage, or a lower percentage in respect of specified items, subject to the proviso that there must be at least a margin of 10% between the threshold for an ordinary resolution and a special resolution</p>
	<p>Special resolution (Form CM 26) accompanied by any other Form required dependent on what special resolution is passed; i.e. Form CM 9 (change of name); Form CM 11 (increase of authorised share capital) etc. is required to be prepared where any changes/alterations made to the Memorandum and Articles of Association, share buy-back, section 228 disposal, section 38 financial assistance, must be lodged within 1 month of passing to avoid penalties. Costing of R80; penalty R150. If not lodged and registered within 6 months of date of passing, special resolution is void, court action required to reinstate.</p>	<p>A special resolution may be adopted at a meeting called for the specific purpose. Notice of the meeting be in the correct manner and within prescribed time and must contain all information necessary for shareholder to take an informed vote on the matter. The MOI must set out the matters in respect of which a special resolution is required. Not all special resolutions need be filed with CIPC, only those affecting or changing the company's MOI; NOI or Rules; placing entities into liquidation and certain fundamental transactions.</p> <p>In addition, Act provides special resolutions –</p> <ul style="list-style-type: none"> • Notice of Amendment to the MOI – CoR 15.2 which must be accompanied by special resolution of the company setting out the amendment to the MOI or a copy of the complete MOI. <ul style="list-style-type: none"> ▪ Change of name <i>accompanied by CoR 9.4</i> ▪ <i>Notice of amendment of MOI RF provisions (CoR 15.2 annexure A)</i> ▪ <i>Application to transfer registration of foreign company (CoR 17.1)</i> ▪ ratifying an act of the company or Board outside its MOI authority; ▪ issuing shares to directors, future directors, related or inter related parties or nominees; ▪ issuing of shares that result in 30% increase in voting rights; ▪ financial assistance in the acquisition of own shares; ▪ loans or financial assistance to directors, related and inter-related company/s; ▪ in respect of the remuneration to directors, except as may be otherwise set out in the MOI; ▪ voluntary winding up of a solvent company; winding up; (CoR 40.1) ▪ disposal of whole or greater part of the assets; ▪ fundamental transactions (disposal, amalgamation or merger (CoR 89) and a scheme) • any matter so required in the MOI • Notice of Alteration of MOI – CoR 15.3 (specified Articles) • Notice of translation of MOI – CoR 15.4 accompanied by a copy of the translated MOI and a sworn statement as required by S17(4). • Notice of Consolidated Revision of MOI. CoR 15.5 – must be accompanied by the consolidated revision of the MOI together with a sworn statement or a statement of an attorney or notary public as required by S17(6). • Notice of adoption, alteration or repeal of company rules – CoR 16.1 • Notice of rule ratification vote – CoR16.2.

Record Keeping	Companies have the obligation to retain incorporation docs permanently, share register, financial statements for 15 years, all other records related to the business for 5 years.	All companies are obliged to maintain certain categories of records for 7 years or longer as prescribed by regulation. Specific information to be maintained: copy of MOI and any amendments thereto and Rules, share Register, directors Register, copies of all reports presented at the AGM, annual financial statements and accounting records, notices and minutes of all shareholders meetings, all resolutions and every document made available to the shareholder in respect of such resolution, copies of written communications sent by the company to all holders of security, minutes of all meetings and resolutions of directors, directors committees or audit committees.
Winding up/ Liquidation	Members may voluntarily wound up ito S249 (windup with liability) or 350 (windup without liability) / Voluntary or Involuntary liquidation, via special resolution.	A company may be dissolved by voluntarily winding up conducted either by the company or its creditors as determined by a special resolution or winding up and liquidation by court order. Special resolution filed together with Form CoR 40.1 (notice of special resolution to wind up an entity) Where the affairs of the company have been wound up, and a court order of final liquidation made, the Master must file a certificate of wind up and remove company's name from companies register. Involuntary Liquidation – Follow Old Act 1973 requirements Liquidation is final.
Deregistration	Where a company has ceased trading, no longer has a place of business and has neither assets nor liabilities, it may make an application via S 75(3) with CIPRO to be deregistered. CIPRO will agree thereto dependent on its tax status with SARS (i.e., tax clearance certificate to be obtained) a deregistered company/close corporation may be resurrected.	Entities can also be removed from companies register where failed to submit annual returns for 2 or more years, or where the company has been inactive for 7 years. Once the entity is removed from the register, it is dissolved however its liabilities or the liabilities of a former director remains unaffected and the liability may be enforced. De-registered entities may be re-resurrected. Deregistered entities may be re-instated with CIPC by the manual lodgement of a CoR 40.5 , together with other requirements as contained in Section 9 of the course file. Deregistration applications can be withdrawn via a letter addressed to CIPC. Business Rescue Proceedings commenced with CIPC via Forms CoR 123.1; 123.2; 125.1; 125.3; 126.1;
Judicial Management		

NEW COMPANIES ACT QUICK IMPLEMENTATION CHECKLIST

TYPES OF ENTITIES AND FORMATION OR CONVERSION THEREOF

- Consider adopting a new Memorandum of Incorporation (MOI) for all pre-existing entities (**this, however, is not compulsory**). Shareholders agreements/pre-incorporation contracts are to be taken into consideration. W.e.f. 1 May 2013, any provision in an entity's existing Memorandum and Articles/Shareholders agreements which is in conflict with the New Act will be null and void. CIPC is to be advised accordingly via Special Resolution (i.e., Form CoR 15.2) together with the submission of new MOI (refer to Section 4 of the course file).
- Review definitions of entities to determine correct categorisation. Names deemed to be followed by the correct suffix. i.e. (RF) designation behind ring fenced company's names, i.e., those entities which have restrictions or special conditions in their MOI's. (refer to Section 1 and 2 of the course file).
- Conversion of entities to be taken into consideration if necessary.
- All company's considered to be "state-owned" are to advise CIPC accordingly by letter. Consider adoption of new MOI for SOE's.
- Update entity's letterheads; business cards; invoices; etc.
- Non-Profit Companies (NPO) - entities to elect whether to have members or not. Their MOI's are to include specific requirements if wanting to be registered as a Non-Profit Organisation with SARS or as a Non-Governmental Organisation (NGO) with the Social Development Government Department.
- Listed entities to ensure compliance with the updated JSE/ALTX/ZARX Listings Requirements

MANAGEMENT

- Determine which employees/consultants/committee members/company secretaries etc fall under the definition of "prescribed officers" in terms of the New Act and record via Board resolution. (refer to Section 7 of the course file).
- Determine directors; prescribed officers; committee members; company secretary and auditors eligibility and ensure they are not disqualified.
- Educate directors and prescribed officers on their duties/responsibilities and liabilities and regularly undertake board evaluations.
- Enquire whether sufficient insurance is in place for directors and prescribed officers.
- If required to or if electing to comply with Schedule 3 of the New Act, i.e., Ltd's and SOC's Ltd (compulsory) to appoint an auditor; audit committee and company secretary – advise CIPC accordingly (Form CoR 44). (refer to Section 7 of the course file).
- The Social and ethics committee is to be appointed if the public interest score is in excess of 500 points in 2 of the previous 5 years (refer to Section 8 of the course file). MOI's to possibly be amended to include/exclude this requirement (i.e., alterable provision).
- All existing board and committee charters or terms of reference have to be reviewed in order to ascertain whether they are in line with the requirements of the new Act.
- Directors to undertake solvency and liquidity tests for all distributions.
- Non-executive directors' fees and income paid to executive directors over and above their salaries require shareholder/s approval at AGM's/Shareholders meetings.
- Set up a whistle-blowing policy. (Refer to Protected Disclosure Act) – see Whistleblower House – <https://whistleblowerhouse.org/>

- Registered office of company to be now situated at the company's principal place of business, i.e., where the business is situated and no longer at an office of convenience, i.e., c/o auditors' offices (refer to Section 6 of the course file).

FINANCIAL YEAR END

- Review the public interest score calculation to determine whether the entity requires an audit and if so, appoint an auditor. The Public Interest Score calculation is to be undertaken annually. (refer to Section 8 of the course file).
- If an audit is not required, a decision is to be taken with regard to other options available. The MOI may require amendment via special resolution (refer to Section 4 of the course file) to read "The company need not be audited." The requirement for an audit will be determined by the directors of the company on an annual basis following application of Section 30 of the Act and Regulation 28." (refer to Section 7 of the course file with regard to the appointment of auditor/audit committee). Note this should be attended to prior to the financial year end of the company; otherwise an audit will still need to be undertaken.
- If an entity does not require an audit, the MOI will require further amendment to exclude the requirement to hold an AGM.
- Close Corporations which may require to be audited in terms of Section 30 will need to advise CIPC of the appointment of an auditor in lieu of an accounting officer via a Form CK2A.

SHAREHOLDER COMMUNICATION

- Review the shareholders rights to receive notices and have access to information.
- Ensure that all notices and other documentation sent to shareholders are sent timeously and in an approved manner (i.e., electronically/review MOI provisions) and in the prescribed form or in plain language.
- In private entities, share certificates are to be endorsed to indicate that the transfer of shares is restricted. (Section 51(1)(iv)).
- Determine whether transactions require director or shareholder approval i.e., approvals required for any distributions, financial assistance (including intra-group loans), insider share issues and options; fundamental transactions, take-overs and offers (refer to the Companies Act and MOI).
- Enquire whether an entity has an employee share incentive scheme which will now require lodgement with CIPC.
- Ensure TRP disclosure requirements are adhered to with regard to regulated companies and fundamental transactions.
- Shareholders are to ensure that powers of directors are limited via the MOI.
- If a company has debt instruments, the definition of shares in their MOI's are to be amended to indicate securities, which include shares and any debt instrument.
- Beneficial Ownership reporting requirements.

SECTION 1

NAMES (PART A OF CHAPTER 2)(Sections 11 and 12) (Regulations 8 – 13)

The Consumer Protection Act 2008 (CPA) came into being on 1 April 2011 and repeals the Business Names Act 1960 and introduces a system of compulsory registration of trading or business names with CIPC (Chapter 4, Part A, read with item 5 of Schedule 2 of the Act) unless a person trades under his or her full name as recorded in their identity document. Relevant sections in the CPA are Sections 79 – 81 (inclusive) Chapter 4 Part A, read with item 5 of Schedule 2.

Business and trading names actively used for a period of at least one year prior to the effective date of implementation will be exempt from compulsory registration.

Note: This will only come into effect once published by the Minister of Trade and Industry in the Government Gazette. The notice by the Minister must furthermore be given 6 months prior to the implementation date. Until the provisions come into force, there is no prohibition on the creation and use of business names.

Suggested interim measure: Register such trading or business names as defensive names with CIPC as a form of protection.

Section 79 of the CPA: Letterheads; statements of account; trade catalogues; order for goods; sales record; trade circular; must contain the name of an entity (including business/trading names); primary address at which the business is carried on and if the activity is carried on under a business name, the name of the person to whom that business name is registered.

Section 32(4) of the Companies Act 2008: refers to the requirement of all companies to include their names and registration numbers on all notices and other official publications of the company.

Restrictions on name reservations

- interest of owners of names and other forms of intellectual property are protected from other persons passing themselves off on the first person's reputation and standing;
- public protected from misleading names which falsely imply that the entity exists when it does not.
- society as a whole is protected against the use of offensive names (i.e., names considered hateful or of a negative nature.) Human Rights Commissioner is able to assist in advising which names could possibly be considered offensive.
- the name applied for, may also not be the same as the name that has been registered as a business name in terms of the Business Names Act; nor a Trademark that has been filled for registration in terms of the Trademark Act, unless applicant is the actual owner of the business name or trademark.
- names in foreign languages are allowed but a certified letter of translation is required to accompany the name application reservation.
- names of entities that have been finally deregistered for failure to submit their annual returns to the CIPC will not be available for future reservation.

Restrictions on name reservations (con/td)

- the name of the applicant for the name reservation must be the same person submitting the new company registration documents upon the formation of an entity/or change of name of an entity. This measure is necessary to ensure that reserved names are not stolen and used without permission.
- If an agent/attorney is applying for the name application on behalf of a company, a power of attorney or mandate of authorisation is required.

New Act additions

- implementation of the use of symbols in names i.e., + & # @ % was deferred for a period of 3 years (i.e., until 1 May 2014) to enable institutions such as banks to budget for the cost of updating their computerised systems. CIPC has not issued a notice that this has come into effect as yet;
- names are allowed in all languages however must be in the RSA alphabet;
- names are allowed to contain numbers, but must be in words or Arabic or Roman Numerals;
- attempts to prevent name squatting (i.e., waiting for reserved names to expire and then attempting to reserve prior to original owner of name attending to same with a view to extort money from original owner of name);
- names are allowed to be transferred from the original applicant to other persons;
- New entities as defined in the New Act, new suffixes (where applicable) to appear at the end of names i.e. (Pty) Limited or Proprietary Limited; Limited; SOC; NPC; Inc. etc. In addition, "RF" (restrictions or special conditions in MOI.) Refer to further explanatory notes in this regard under Section 2 of course file;
- registration number allocated to all newly registered companies (excluding NPC's) may be utilised to identify the company as the company's name, provided the registration number is followed by the suffix "South Africa." No mandatory requirement to reserve or register a company's name on formation. (Form CoR 14.1 Annexure B optional – refer to Section 3 of the course file);

All newly defined entities are "deemed" to have changed their names/designation of names in line with the New Act requirements w.e.f. 1 May 2011 (Schedule 5).

Additional Notes:

- Close corporation name applications are to follow the same procedure as that for other entities. Form CK 7, is no longer applicable.
- Disclosure of main business/objects of an entity is no longer a requirement on the Form CoR 9.1 (Nor in the MOI, except for NPC's). Companies have the power of a natural person.
- If attending to a name swap between two existing companies or between an existing close corporation and an existing company or vice versa, there is no need to reserve the names, however when the application documentation is submitted to CIPC, it is to be accompanied by an original letter of consent detailing the fact that the entities wish to swap their names, duly signed by the Managing Director on the relevant letterhead/s together with a recent certified copy of the MD's RSA ID's.

- Name searches for existing business names can also be undertaken on the CIPC website on the front page without needing to log in as a customer. (Bizportal function - agent code required)

Registration of shortened/translated names

The New Act no longer provides for the registration of shortened or translated names.

Initial name reservation application (Regulations 8 and 9)

Procedure to be followed :-

Log in to CIPC website, click on Transact, Name Reservations and complete the name application to reserve a name with CIPC electronically (at a cost of R50). **If additional attachments, being relevant documents or evidence is required in terms of Regulation 8 and 9 (as defined below)** a manual lodgment of Cor 9.1 (at a cost of R75) should be emailed to namereservations@cipc.co.za together with supporting evidence. CIPC can be given up to 4 options per application, in order of preference. If a name choice is approved by CIPC, a Form CoR 9.4 (Confirmation Notice of Name Reservation) will be issued by CIPC. The approved name reservation will be valid for a period of 6 months from the date appearing on the Form CoR 9.4.

Relevant documents or evidence to accompany application if required in terms of Regulation 8 and 9

- trademark name applications to be accompanied by evidence of use.
- associated/group name applications are to be accompanied by evidence from an associated company i.e., original letter on company's letter, duly signed by the MD, consenting to the use of the new proposed name for the entity it is to be associated with. Recent identifiable certified copy of MD's RSA ID required.
- Should a name applied for be similar to that of another trading entity's registered name or reserved name; defensive name etc, the applicant will require permission from the registered owner of the existing registered name (i.e., original letter on owner's letterhead, duly signed, consenting to the use of the similar name), together with a recent identifiable certified copy of the owner's RSA ID.

Extension of name reservation application (Regulations 8 and 9)

Prior to the date of expiry of Form CoR 9.1, complete and file Form CoR 9.2 Application to extend a name reservation with CIPC electronically (at a cost of R30). If approved by CIPC, a Form CoR 9.4 (Confirmation Notice of Name Reservation) will be issued by CIPC. The approved extension of name reservation will be valid for a further period of 60 business days from the date appearing on the Form CoR 9.4.

Defensive name registration (Regulation 10)

Complete Form CoR 10.1 Application for defensive name and email it to namereservations@cipc.co.za (at a cost of R200). (At this time, it cannot be submitted online). **If additional attachments, relevant documents or evidence is required in terms of Regulation 8 and 9 (as defined above) including proof or evidence of usage** (a cost of R250 will be levied). If approved by CIPC, a Form CoR 9.4 (Confirmation Notice of Name Reservation) will be issued by CIPC. The approved defensive name registration will be valid for a period of 2 years from the date appearing on the Form CoR 9.4. (This is not indicated in Regulation 10, nor on the Form CoR 10.1)

Application to renew (extend) a Defensive name registration (Regulation 10)

Prior to the expiry of Form CoR 10.1, complete online Form CoR 10.2 Application for renewal of defensive name registration with CIPC electronically (at a cost of R30.) If approved by CIPC, a Form CoR 9.4 (Confirmation Notice of Name Reservation) will be issued by CIPC. The approved renewal of defensive name registration will be valid for a further two years from the date appearing on the Form CoR 9.4. (This is not indicated in Regulation 10, nor on the Form CoR 10.2)

Application to Transfer a Reserved Name or Defensively Registered name (Regulation 11)

Complete online Form CoR 11.1 Application to Transfer a Reserved Name or Defensively Registered name with CIPC electronically providing the details of both the transferor and transferee (at a cost of R75.) **If additional attachments, being relevant documents or evidence is required in terms of Regulation 8 and 9 (as defined above), including proof or evidence of usage; or if applicant or transferee is a juristic person and/or if applicant differs from the person who originally reserved the name, their contact particulars, together with a copy of the original approved Form CoR 9.4 and a letter or affidavit from the transferor authorising CIPC to record the transfer with CIPC** (a cost of R100 will be levied.) If CIPC approves the transfer application, a further Form CoR 9.4 (Confirmation Notice of Name Reservation) will be issued by CIPC. The effective date of transfer will appear on the Form CoR 9.4.

(Old Act – Transfer of reserved names or defensive registered names was not allowed)

IN INSTANCES WHICH REQUIRE SUBMISSION OF ADDITIONAL DOCUMENTATION TO CIPC UPON NAME OR DEFENSIVE NAME RESERVATION THIS PROCESS HAS TO BE DONE MANUALLY BY EMAILING THE RELEVANT DOCUMENTS TO namereservationsandregistrations@cipc.co.za

CIPC to communicate with the name applicant via the following Forms:-

Form CoR 9.3 - notice requiring further particulars in respect of name reservation.
Form CoR 9.4 - confirmation notice of name reservation as detailed above.
Form CoR 9.5 – notice refusing name reservation or defensive registration
Form CoR 9.6 – notice of potentially contested name, accompanied by Form CoR 9.5
Form CoR 9.7 – notice of potentially offensive name, accompanied by Form CoR 9.5
Form CoR 11.2 – notice of refusing name transfer
Form CoR 12.1 – notice alleging reservation system abuse.

Commented [SB7]: Proof or evidence of usage could be full particulars of the period of use of the name; particulars of sales and advertisements and labels used and a statement that as a result of the use of the name it has become well-known and that the general public will probably assume that all goods or services bearing the name or all services rendered under that name, derive from the applicant.

Name Objections/Disputes (Regulations 12 and 13)

Submissions are to be made to CIPC in terms of Section 160 of the New Companies Act; Section 20 of the Close Corporations Act, No. 69 of 1984 and Section 5 of the Business Names Act. Applications to be made in triplicate to the Companies Tribunal.

Procedure:

- Application for objection **Form CTR 142 (application for relief)** to be submitted to Companies Tribunal within 3 months of receiving applicable Form CoR notice listed above, i.e., Form CoR 9.5 or CoR 11.2, accompanied by whatever proof or reasoning applicable to the application for relief.

Powers of Companies Tribunal

- Order CIPC to either reserve or register a name.
- Cancel reservation if it is not as yet utilised.
- Order an existing entity to change its name.

Decisions taken by the Companies Tribunal are binding on CIPC, however all parties have an option to apply to the Courts for review/appeal.

Domain Name Services

CIPC has partnered with ZA Domain Name Authority (ZADNA) to render domain name registration for registered entities through the e-Services website. <https://www.zadna.org.za/cipc-za-domain-name-registration>.

Commented [58]: Section 160: Disputes concerning name reservation or registration of company names: An administrative order to change the name of a company must now indicate a date by which compliance is required in the absence of which the CIPC may on application change the name of the company to reflect its registration number.
Section 167: Dispute resolution may result in consent order: References to entities other than the Companies Tribunal have been deleted which means that the provisions of this section will only apply if the Companies Tribunal had been involved in resolving a dispute between parties.

CHAPTER 4
BUSINESS NAMES AND INDUSTRY CODES OF CONDUCT

Part A

Business names

Identification of supplier

79. (1) A person must not carry on business, advertise, promote, offer to supply or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except- (a) the person's full name as

(i) recorded in an identity document or any other recognised identification document, in the case of an individual; or

(ii) registered in terms of a public regulation, in the case of a juristic person; or (b) a business name registered to, and for the use of, that person in terms of section 80, or any other public regulation.

(2) A person doing anything contemplated in subsection (1) must include the following particulars on any trade catalogue, trade circular, business letter, order for goods, sales record or statement of account that the person issues:

(a) The name, title or description under which the business is carried on;

(b) a statement of the primary place at which, or from which, the business is carried on; and

(c) if the activity is carried on under a business name, the name of the person to whom that business name is registered.

TRADEMARKS

A Trademark is a brand name, business name, product name, a slogan or a logo. It identifies the services or goods of one person and distinguishes it from the goods and services of another.

Examples include:

Brand Name:	COCA COLA, AQUAFRESH
A slogan:	“Everything keeps going right Toyota”
A logo:	The Nike tick, or the McDonalds “M”
Specific shape:	The Coca Cola bottle

Thus, a brand name is a word or combination of words (e.g., Kentucky Fried Chicken). A slogan is a short phrase or sentence and a logo is a distinctive picture or symbol. They provide a distinctive identity in the marketplace. They can apply to both products and services.

When a Trademark (brand name, slogan or logo) has been registered, nobody can use this Trademark, or one that is confusingly similar. If this happens, legal action may result.

Many business owners underestimate the critical importance of trademark protection or often are totally ignorant of the importance of the need to protect the business “Trademarks.”

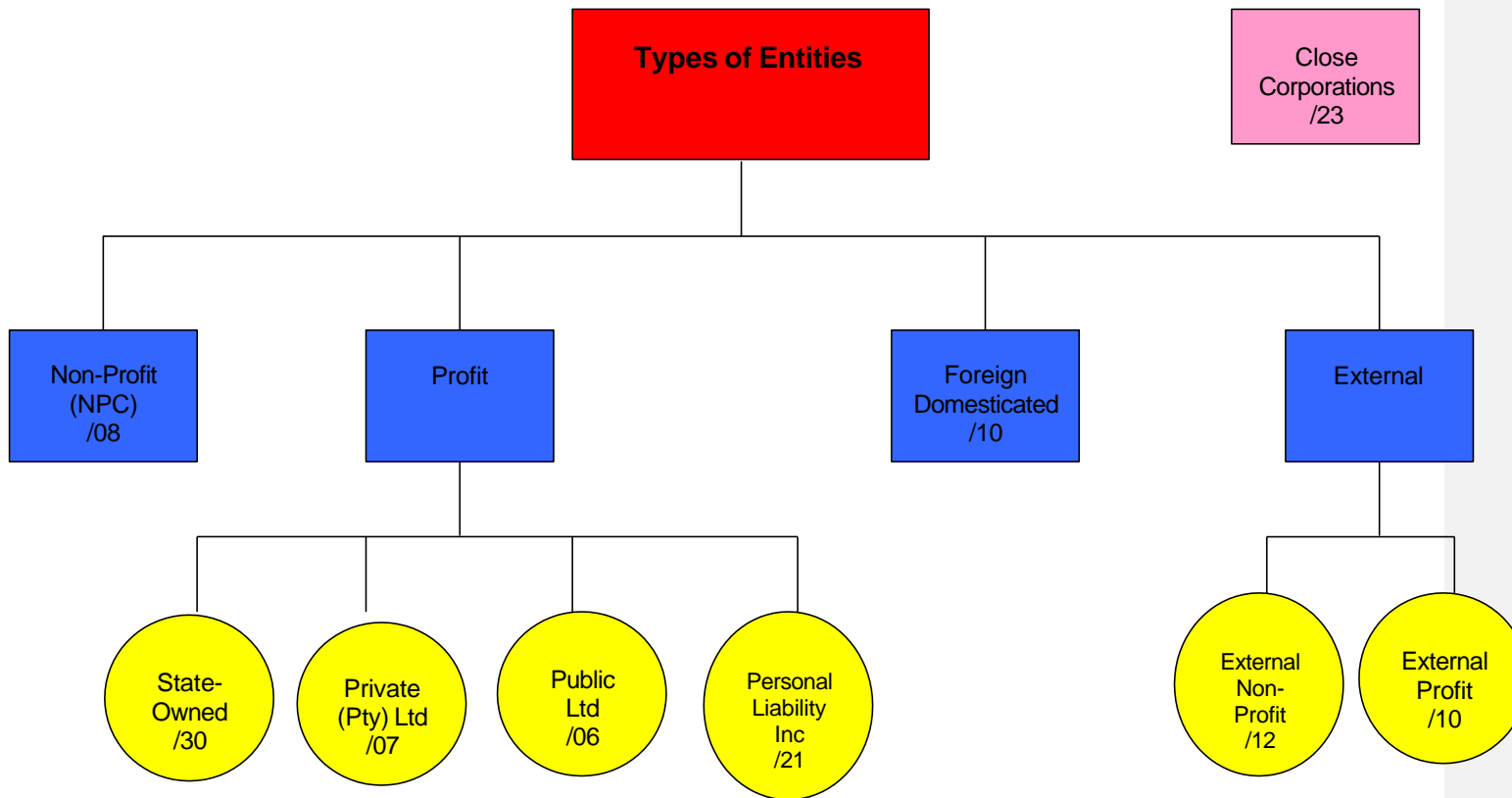
IMPORTANCE OF TRADEMARK REGISTRATION:

The advantages of Trademark registration are substantial and numerous and includes:

1. Unregistered Trademarks can be defended in common law, however registration of a Trademark and the issue of a registration certificate indicating legal status grants the registered owner of the Trademark a monopoly over the use of the mark as well as a statutory right to prohibit competitors from using exact or similar marks. Therefore, the owner of a business name, slogan logo or product name which is registered is the only entity that may use same.
2. Registration of a Trademark grants a business the opportunity to generate extra revenue by licensing and/or franchising the business and its intellectual property.
3. Registered Trademarks are commercial commodities capable of being sold and assigned for substantial amounts or may even be used as security for a business loan.
4. Trademark registration creates a statutory presumption of ownership and provides a defense against third parties bringing infringement actions against the owner of the registered Trademark.

CIPC administers the Register of Trademarks that is a record of all the trademarks that have been formally registered.

A registered Trademark can be protected forever, provided it is renewed every ten years upon payment of a renewal fee.



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SECTION 2

TYPES OF ENTITIES

Companies (PART B OF CHAPTER 2)(Section 8: 9 and 10)

In the New Act, a company is defined as

- a juristic person or
- a company that was in existence prior to 1 May 2011

Transitional arrangements (Schedule 5)

All pre-existing companies/ close corporations continue to exist as if incorporated under the New Act with the same name and registration number. Changes in designations are deemed to have been made and companies are not required to file any change of name documents with CIPC. i.e., ring-fenced "RF" companies. Note: New depiction of names for example Proprietary (in full without brackets); NPC (in lieu of Association Not for Gain); (SOC) (entities owned by State) are to advise CIPC in writing of their new status in order that these entities may be assigned a new type of code and amendment of registration number suffix to /30).

NEW ACT PROVIDES FOR TWO CATEGORIES OF COMPANIES :-

NON-PROFIT COMPANIES "NPC"

(Old Act Section 21 companies ("Associations not for Gain") (suffix /08)

Companies incorporated for a public benefit object or an object relating to one or more cultural or social activities or communal or group interests (at least one object must be disclosed in MOI) and whose income and property is not distributable to its incorporators; members; directors; officers or related persons, except as reasonable remuneration for services rendered.

- NPC may acquire securities in a profit company, directly or indirectly, alone or with others, carry on a business, trade or undertaking which is consistent with or ancillary to its stated objects.
- NPC may not amalgamate or merge with or convert to a profit company or dispose of any of its assets, undertaking or business to a profit company, except to the extent that it is in the course of the ordinary activities of a non-profit company and that the members (if any) or directors have followed the required procedures in terms of the New Act (see Fundamental Transactions Item 2 of Schedule 1)

NON-PROFIT COMPANIES “NPC” (CONT/D)

- Compliance by a NPC (or External NPC) with the New Act does not necessarily qualify that NPC or external NPC for any other particular status, category, classification or treatment in terms of the Income Tax Act 1962, or any other legislation except to the extent that any such legislation provides otherwise (i.e. registration as a PBO (Public Benefit Organisations - engaged in public benefit activities (PBAs) and includes institutions such as religious institutions, day care centres, disaster relief organisations, health clinics, etc and/or as an NGO (A non-governmental organisation, typically is established to work toward public or social welfare goals._ and or an NPO (A Nonprofit Organisation defined as: a trust, company or other association of persons established for a public purpose, the income and property of which are not distributable to its members or office bearers accept as reasonable compensation for services rendered with the DSD (Department of Social Development.) In these instances, SARS and the Department of Social Development have their own specific requirements which are to be incorporated into the NPC's MOI.)
- May be incorporated with or without members, to be indicated in MOI. If it has members, two categories of membership are catered for namely voting and non-voting members. (Old Act – A Section 21 company had to have a minimum of 7 members).
- Inclusion of Association Agreement/Constitution in either the MOI or Rules of the Company recommended.
- 3 Directors/3 Incorporators (min)

Companies Limited by Guarantee (Form of NPC)(suffix /09)

As dealt with above.

External company (Non-Profit) (suffix /12)

A foreign non-profit external company must, within 20 business days after it begins to conduct non-profit activities in RSA, register with CIPC as an External Non-profit company, if within its jurisdiction of incorporation, it meets legislative or definitional requirements that are comparable to those of RSA. Refer to notes below regarding External For-Profit Entities.

FOR PROFIT COMPANIES

- Companies incorporated for financial gain for its shareholders.
- 1 Incorporator required (min)

Private companies - (Pty) Ltd / Proprietary Limited (suffix /07)

- 1 Director (min); shareholders unlimited (old Act max number of shareholders = 50).

The MOI prohibits it from offering its shares to the public and restricts the transfer of its shares to the public.

Notes:

Some entities are registered for a specific purpose and known as “SPV.” If an entity has been registered for a specific purpose or if there are restrictive or special conditions or prohibitions on certain powers of the company and/or additional requirements beyond those required by the Companies Act as contained in its MOI, these entities are known as ring-fenced companies and as such the expression “RF” must appear in the company’s name.

The Act provides that a company has the same capacity as a natural person (except where certain acts are impossible for juristic persons) and that a third party can assume that a company has full capacity, unless “RF” appears in the company’s name. A third party will therefore be deemed to have knowledge of a limitation where a company’s power is restricted and “RF” appears in its name.

(Old Act – Doctrine of constructive notice was applicable, i.e., Third parties contracting with “RF” entities were deemed to know whether or not the company had certain powers as the Memorandum and Articles of Association is a public document and open to inspection.)

Personal liability companies – Inc (suffix /21)

Meets criteria for a private company. Directors are jointly and severally liable with the company for its debts and liabilities (Section 19 (3) (Old Act (Section 53(b))).

This type of company can only be used by professional partnerships, e.g., auditors, stockbrokers, attorneys, town planners, architects, medical practices, etc. who wish to exploit the advantages of corporate personality such as perpetual succession (i.e., in lieu of a partnership).

- This condition is to be included in the MOI, i.e., “the directors and past directors are jointly and severally liable together with the company for such contractual debts and liabilities of the company as are or were contracted during their period of office.” E.g., The liability of the directors is incorporated with the liability of the company.
- The MOI or Rules must provide for certain rules and regulations regarding the specific body to which the profession is related, e.g. If it is a medical corporation, it will have to comply with the rules and regulations of the South African Medical and Dental Council.
- Directors and shareholders must be one and the same person.
- The articles must also specify what happens to the shares in the case of a deceased Member.
- 1 director/incorporator (min).

Public companies – Ltd (suffix /06)

- 3 directors (Listed companies 4) (Should read a minimum of 6 directors (two Executives (CEO and FD); 3 Non-Executives/ Independent Directors and a Non-Executive Chairman, being the minimum requirement for the composition of an audit committee as recommended by King IV).
- Shareholders unlimited.
- May offer its shares to the public.

- May be listed on an Exchange (AltX/JSE/ZARx) in which case, the company will be required to comply with JSE/AltX/ZARx requirements and regulations.

State owned enterprises – SOC Ltd. (suffix /30)

- 3 directors (Should read a minimum of 6 directors (two Executives (CEO and FD); 3 Non-Executives/ Independent Directors and a Non-Executive Chairman, being the minimum requirement for the composition of an audit committee as recommended by King III).

New type of entity owned by, or accountable to the National or Provincial Government or Municipality. Also known as National Government Business Enterprise. (Listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act (PFMA) 1999). Principal business provides goods and services to the public and financed by the National Revenue Fund and SARS or any other statutory body.

Section 8 of the New Act allows for any type of profit company to be classified as an SOC. In terms of the transitional arrangements, no special resolution is required (Item 4 (c) of Schedule 5 of the Act). All SOC companies, whether private or public are to use the suffix SOC Ltd and are to notify CIPC of their change of status via letter.

External for profit company (suffix /10)

Foreign entities must register as an external company with CIPC within 20 business days from when it commences conducting business (or non-profit activities) within RSA, i.e.:-

- becomes a party to contracts of employment.
- engages in a pattern of conduct for at least 6 months.

And not solely on the grounds that it :-

- holds meetings;
- opens bank accounts;
- enters into lease agreements;
- acquires property;
- is engaged in maintaining, defending or settling any legal proceedings;
- holds shareholder or board meeting in RSA;
- conducts any of the internal affairs of the company in RSA ;
- establishes or maintains offices or agencies for the transfer, exchange or registration of the foreign companies own securities.
- secures or collects any debts

An external company must continuously maintain at least one office in RSA.

Foreign companies (i.e., Foreign Domesticated Company) (suffix /10)

The New Act allows for :-

- Application to **transfer registration of an existing foreign company** (i.e., foreign company transferring its registration to RSA), known as a “foreign domesticated company,” **Form CoR 17.1** required. Once registered CIPC will issue a Registration Certificate (**Form CoR 17.3**). Section 13 (6) of New Act severely restricts the number of foreign companies that are eligible for registration under the New Act.

In addition, the New Act allows for **an existing RSA company to transfer its registration to a Foreign Jurisdiction via Special Resolution**. **Form CoR 40.2** is required. (dealt with further under Section 4 of the course file). Once registered, the RSA company must apply to the CIPC for deregistration (refer to Section 9 of the course file)

Close Corporations (suffix /23)

The New Act provides for the continued existence of close corporations registered prior to 1 May 2011. Transitional arrangements allowed the further registration of Close Corporations until 22 December 2011.

Members are able to convert their close corporations into one of the other entities provided by the New Act, when and if it is in their interest to do so. If converted into another entity within 3 years (i.e., up until 1 May 2014), no CIPC filing fee was incurred. (refer to Section 3 of the course file).

New Act Requirements:-

Close corporations are also required to calculate their public interest score each financial year in order to determine which financial reporting standards are to be applied. (refer to Section 8 of the course file)

Other entities (not covered on this course)

Primary Co-Operative (suffix /24) Secondary Co-Operative (suffix /25) Tertiary Co-operative (suffix /26) Statutory Body (suffix /31)

Co-Operative – defined as a juristic person in terms of the Co-Operatives Act 2005.

Companies Limited by Guarantee (Form of NPC)

CLOSE CORPORATIONS

Distinguishing Features

Close Corporations acquire legal personality upon incorporation.

Legal personality is required upon registration of founding statement.

Close Corporations enjoy perpetual succession, which means the entity exists separately from its members and changes in membership will not influence the future existence.

Sometimes the court may be called upon to “pierce the corporate veil” or disregard separate legal personality from Close Corporations. As Close Corporations were intended mainly for small businesses, the number of members is limited to ten only and natural persons are permitted to be members of a Close Corporation. A minor, insolvent person or person under legal disability may become or remain a member of a Close Corporation with assistance from a guardian, trustee or the court. A trustee in his or her capacity as trustee of a testamentary/inter vivo trust may become a member of a Close Corporation. However, restriction in membership to ten members still applies.

Should a member of a Close Corporation change, a founding statement must be lodged with the registration. The Close Corporation Act regulates Close Corporations upon incorporation of the new Companies Act certain sections of the Close Corporations act is now amended.

FUTURE OF CLOSE CORPORATIONS

Upon incorporation of the New Act it will no longer be possible to register a Close Corporation. Existing Companies are now also prohibited from converting into a Close Corporation. Already existing Close Corporations will be permitted to continue and the Close Corporations act will not be repealed. Provision is however made for Close Corporations to convert into Companies.

INTERNAL RELATIONS IN A CLOSE CORPORATION

Association Agreements: (Regulates internal affairs)

An association agreement is not a prerequisite for the formation and running of a Close Corporation. The members of the Close Corporation may change provisions to suit their specific needs in an association agreement on condition changes are not inconsistent with the Act. An Association agreement must be signed by all members.

CERTAIN MATTERS ARE UNALTERABLE:

Disposal of insolvent member's interest;
Who is disqualified from participating in management;
The right to call a meeting;

ALTERABLE PROVISIONS INCLUDE:

Rights of members to carry on business and manage the Close Corporation;
What the requirements are for making a decision and voting;
The procedure and proportions for payments to members;
Manner in which members will settle disputes
Procedure to be followed at meetings.

LOANS AND PAYMENTS TO MEMBERS: SECTION 21.

Loans can only be made to members if written consent is given by all the other members and Solvency and Liquidity tests are complied with. Section 51 only applies to instances where payments are made to members in their capacity as members and not if the payment was made to a member in their capacity as a creditor.

EXTERNAL RELATIONS : REPRESENTATION ON CLOSE CORPORATIONS SECTION 54

Members act as agents for Close Corporations
Doctrine of constructive notice does not apply to Close Corporations. Therefore, Third Parties or outsiders are not deemed to have knowledge regarding the content of Close Corporation registered documents. Close Corporations in general are bound to any contract concluded with an outsider by a member, regardless of whether or not a transaction falls within the scope of the enterprise's main business. A Close Corporation could however escape liability if the Third Party or an outsider knew or reasonably ought to have been aware of the fact that the member concluded the contract on behalf of the Close Corporation and lacked the necessary authority to do so.

DUTIES MEMBERS OWE TO THE CLOSE CORPORATION

1. FIDUCIARY DUTY (duty of good faith) in terms of Section 42 in the Act Close Corporation Act.

SECTION 42 OF THE CLOSE CORPORATION ACT provides a member should:-
Act honestly and in good faith;
Avoid a conflict of interest between his/her own interests and those of the Close Corporation;
Exercise powers in interest of Close Corporation;
Disclose any interest in a transaction to other members of the Close Corporation;
Not derive any economic benefit to which he/she is not entitled to by virtue of their membership of the Close Corporation.

CONTRACT CONCLUDED BETWEEN MEMBER AND CLOSE CORPORATION

Should the member have a material interest in a contract of the Close Corporation, it must be disclosed to other members and all material facts regarding the interest must be disclosed as soon as possible.

Should a member fail to disclose their interest, the contract would be voidable at the option of the Close Corporation. Application may however be made to the court to declare the contract binding upon the parties despite failure to disclose. If fiduciary duties are breached, a member may be held personally liable for any loss suffered by the Close Corporation or debts incurred as a result in such a transaction. The member would then have to repay any profit made by him/her.

2. DUTY OF CARE AND SKILL

A member will be liable only if the Close Corporation suffers a loss as a result of the breach of this duty (Section 43(1)). The member's conduct is measured against the conduct that could have reasonably been expected from a person with the same level of skill and knowledge as member (to establish negligence). If there has been a breach of duty of care and skill another member may institute an action against the Close Corporation or its members in their personal capacity.

Personal liability of debts:

A member may incur personal liability for the debts of the Close Corporation if a contract were concluded that conflicted with their fiduciary duty to the Close Corporation. Personal liability can be avoided by disclosing all material facts regarding the member's interest in the transaction to the other members of the Close Corporation and acquiring written approval from the other members.

MEMBERSHIP

Characteristic of Members interest

Member's interest is expressed as a percentage (out of a total 100%) in the founding statement;
Member's interest may not be jointly held;
Aggregate members interest must at all times add up to 100%;
Member's interest in Close Corporation is similar to a share in a company;
Member's interest is an incorporeal movable thing;
A member's interest is a personal right to share in the profits of the Close Corporation after its creditors have been paid.

Member's interest is acquired by:

Becoming a member upon registration of founding statement;
Acquiring member's interest from existing members;
Making a contribution to Close Corporation.

Disposal of member's interests is largely controlled by the members.

Requirements for disposal of member's interests:

Must be made in accordance with Association agreement;
With the consent of all members.

Death of a Member:

A member may bequeath his/her interests to an heir or legatee in a will;
Transfer of the properties interests to the heir/legatee may however only occur with consent of the other members.

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- Should the members not permit such transfer, an executor of an estate may:
- Sell member's interest to Close Corporation;
 - Sell member's interest to other members;
 - Sell member's interest to a Third party subject to the other member's pre-emptive right to purchase the member's Interest.

Insolvency of a member:

Section 34(1) of Close Corporations Act – prescribes a mandatory procedure for the disposal of an insolvent member's interests. The purpose is to balance the rights of other members.

If a member becomes insolvent, a trustee may realise a member's interests and do one of the following;

- Sell member's interest to Close Corporation;
- Sell member's interests to other members;
- Sell member's interest to a Third party subject to the other member's pre-emptive right to purchase the member's interest.

Attachment and Sale in Execution: Section 34A- applies in instances where a member's interest has been attached after judgement is taken against the member.

The member's interest may then be:

- Sell member's interest to Close Corporation;
- Sell members interests to other members;
- Sell members interest to a Third party subject to the other member's pre-emptive right to purchase the members interest.

SECTION 3

FORMATION OF ENTITIES (PART B OF CHAPTER 2 (Sections 13 – 23 and Regulations 14 - 20))

(The Old Act formation procedure was a lengthy process involving the completion and submission of various different Forms. The Name of entity had to be reserved prior to the preparation and lodgement of formation documentation with CIPRO.)

Transitional arrangements:

Adoption of MOI is not compulsory.

The two-year grace period (i.e., until 1 May 2013) for all pre-existing entities (i.e., those entities registered prior to 1 May 2011) to adopt an MOI in substitution of its existing Memorandum and Articles of Association (via special resolution – Section 4 of course file) at no cost has expired.

In addition, the transitional arrangement, being any conflict between the pre-existing Memorandum and Articles of Association and the New Act, the pre-existing Memorandum and Articles of Association prevailed for a two-year grace period i.e., up until 1 May 2013 has also expired.

In the Old Act, shareholders agreements (or any agreement of the shareholders with one another concerning any matter relating to the company, which includes voting agreements; preference share agreements etc) prevailed over the Memorandum and Articles of Association, if so stated therein. Pre-existing Memorandum and Articles of Association should have, at the time the shareholders agreements were entered into, been amended to include the provisions of shareholder agreements.

In the New Act, or w.e.f. 1 May 2011 any amendment/s made to the terms and conditions of existing shareholder agreements or any new shareholders agreements entered into immediately necessitated the amendment or adoption of a new MOI incorporating the terms and conditions of the shareholders agreement, i.e., the 2-year grace period until 1 May 2013 automatically lapsed. If not attended to the new shareholders agreement or the amendment/s made to the terms and conditions of existing shareholder agreements are considered null and void.

Refer to further to Section 4 - Special Resolutions of the course file.

Formation Requirements:

Form CoR 14.1 Notice of Incorporation (Regulation 14) (to be completed by each incorporator) accompanied, where required, by the following documentation:-

- **Annexure A** (initial directors) – if not all directors are to be recorded on formation, a Form CoR 39 is to be filed with CIPC (refer to Section 7 of the course file) within 40 business days of incorporation.
- **Annexure B** (alternative names) (not required if formation documentation is accompanied by a Form CoR 9.4 (Confirmation notice of name reservation) as discussed under Section 1 of the course file
- **Annexure C** (Notice of RF provisions) - if entity is a “ring-fenced” entity
- **Annexure D** (particulars of auditor; secretary and audit committee members) - compulsory for public entities and SOC’s

Form CoR 15.1 Memorandum of Incorporation (MOI) (Regulation 15). Either a unique MOI (which must be consistent with the Act) or the adoption of MOI template options (detailed below) are dependent on the type of entity. The New Act imposes certain specific requirements as to the content of the MOI, where necessary, to protect the interests of the shareholders of the company and provides a number of default rules or alterable provisions, which companies may either accept or alter as they wish to meet their needs and best serve their interests.

<u>Type of Entity</u>	<u>MOI Template Filing requirements</u>
Private Companies	- Form CoR 15.1A (short form) or - Form CoR 15.1B (long form)
Personal Liability/Public Company/SOC	- Form CoR 15.1 B (long form) compulsory
Non-Profit Company	
- Without members	- Form CoR 15.1 C (short form) or - Form CoR 15.1D (long form)
- With members	- Form CoR 15.1 E (long form) compulsory

CIPC filing fees – Forms CoR 15.1A or CoR 15.1C R175 is payable. In all other cases, including unique MOI’s R475 is payable. In both instances, if the name of an entity has been reserved prior to formation, the cost thereof is deducted from these amounts.

Submission of company formation documentation with CIPC:-

FORMATION OF A COMPANY WITH A STANDARD MOI (currently only PTY and NPC)

In order to register a new company with a standard MOI, all the necessary details (name, company details and director's details) are submitted online and a company registration document is produced by CIPC which is signed by all directors and uploaded with CIPC via the Transact portal Document Upload icon.

After Registration, the Forms CoR14.1, CoR14.1A, and CoR15.1A are to be downloaded from the CIPC website either by a director of the company (free) or by the Agent who registered same at a cost of R30.00 and signed by a director and retained as original registration documentation.

FORMATION OF A COMPANY WITH A CUSTOM MOI/AN NPC/PUBLIC CO/ PERSONAL LIABILITY COMPANY

The following documentation is required for the registration of a custom MOI

1. CoR14.1 and CoR14.1A;
2. CoR14.1D – only required if a public company or state-owned company or if you voluntary wish to be audited and wish to appoint an auditor/audit committee and or company secretary;
3. CoR14.1C – only required if you wish to ring fence provisions/impose restrictions;
4. CoR9.4 (if name is already reserved) or CoR14.1B – if you want to register the entity with a name simultaneously; and
5. an MOI being either your own unique drafted MOI, or depending on what type of entity, one of the following will be used - CoR15.1B, CoR15.1C or CoR15.1D; The completed and signed documentation listed above together with the directors' and agent's certified ID's or passports (only if not SA citizens) are emailed to companydocs@cipc.co.za. If the file is larger than 10MB it must be compressed or couriered to Block F DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.

The following additional documentation may be required :-

- Forms CoR 35.1 and CoR 35.2 (if **pre-incorporation contract** entered into prior to registration of entity) - see pages 6 and 7 of this section's notes for further explanation
- Forms CoR 16.1 and CoR 16.2 (if **rules** are to be applied) – see page 11 of this section's notes for further explanation

If for any reason the formation documentation is incomplete or further documentation is required, CIPC will advise the entity accordingly via a notice CoR 14.2 Notice requiring further particulars.

Upon registration of the entity by CIPC, they will issue a Form CoR 14.3 Registration Certificate. (Old Act Form CM 1 – Certificate of Incorporation).

PRE AND POST REGISTRATION FORMALITIES FOR ALL TYPES OF ENTITIES

- Refer to the enclosed questionnaire to assist in accumulating all information required to prepare formation documentation for an entity. **NB** reminder to obtain recent identifiable certified copies of RSA ID's/Passports of foreigners as well as all contact cellphone no's email addresses etc.

Once an entity is registered, further inaugural secretarial functions are to be carried out :-

- Opening of bank account;
- Preparation of the inaugural minutes;
- Preparation of initial shareholders' share certificate/s;
- Write up manual or electronic register and prepare a statutory file.
- Reporting of Beneficial ownership to CIPC within 10 business days of incorporation

Upon registration of the company by CIPC, SARS will automatically forward the Income Tax number to the directors of the company. If it is not received same can be retrieved by obtaining a Certificate from CIPC.

- Consideration is to be given in regard to whether the entity is to be registered with SARS for Tax exemption status (in the case of an NPC); PAYE; UIF; SDL and as a VAT vendor
- Workmen's Compensation Commissioner
- Human Rights Commissioner with regard to the provision of the Access to Information Act (refer to Section 6 of the course file)
- Department of Social Development for tax-exempt status, i.e., registration as an NPO (in the case of an NPC)

DEFINITIONS

Holding Company: A company that owns 100% of other companies shares. It does not usually produce goods or services itself. Its purpose is to own shares of other companies (usually identifies itself by adding “Holding” to the name).

Subsidiary Company: A company which is controlled by a separate higher entity which is referred to as the parent company (i.e., at least 51% of its shares are held by the parent company).

Associate Company: A company where the parent company holds less than 50% of its shares.

Related and Inter-related companies:

A juristic person is related to another juristic person, if

- either is directly related or indirectly controlled by the other or
- either a subsidiary of the other or
- a person (natural or juristic) directly or indirectly controls each of them or the business of each of them

CHECKLIST – FORMATION OF COMPANY DETAILS

- A) NAME AND TYPE OF COMPANY**
Decide on at least 4 names, in order of preference and/or enquire further whether the proposed name is related to another company with a similar name (i.e., part of a group). A company may also be incorporated with the registration number as the name.
- B) MAIN BUSINESS/OBJECTS (COMPULSORY FOR NPC'S ONLY NB NOTE RING-FENCED CONDITIONS)**
- C) REGISTERED OFFICE & POSTAL ADDRESS**
Ensure the physical and postal address is that at which the company operates (i.e., it is the actual business address and not an address of convenience i.e., auditors offices).
- D) FINANCIAL YEAR END**
Decide on what the financial year end of the company will be.
- E) SECRETARY/AUDIT COMMITTEE MEMBERS**
Determine if a secretary/audit committee is/are to be appointed (compulsory only in Ltd and SOC entities). If so, ensure a CONSENT FORM is duly signed and FULLY completed by the proposed secretary and each of the proposed audit committee members.
- F) AUDITOR/INDEPENDENT REVIEWER**
Determine if the company requires an audit or elects to be audited/independently reviewed, provide CIPC with the name of the proposed independent auditor or partner of a firm of auditors to be appointed as auditors of the company, as well as the/their practice number.; business and postal addresses and telephone and fax numbers.

There is no requirement to submit independent reviewer's details to CIPC.
- G) PUBLIC OFFICER**

Determine who will act as the Public Officer of the company and when applying for a tax number, advise SARS of the full names; residential; business & postal addresses and identity number of the proposed public officer. Note: The public officer must be a registered taxpayer with SARS; a resident in RSA and must be a senior official of the company with the requisite Tax Act knowledge to fulfil the role. (certified copy of RSA ID required and proof of residence).
- H) AUTHORISED SHARE CAPITAL (N/A FOR NPC'S)**
Determine the authorised share capital, i.e., 1 000 ordinary shares of no-par value (NPV). If different classes of shares are required, attach the rights thereto.
- I) ISSUED SHARE CAPITAL (N/A FOR NPC'S)**
Determine the Issued Share Capital, i.e., 100 ordinary shares of NPV each and the name/s of the shareholder/s; the/their addresses, contact numbers and the proportion of the/their shareholding.
- J) DIRECTORS**
Arrange for all proposed directors to sign and FULLY complete:
CONSENT FORM AND COR36.4. (ONE PER DIRECTOR). Provide a list of any other directorships held.
- K) HAS THE ENTITY ENTERED INTO ANY PRE-INCORPORATION CONTRACTS IN WHICH CASE IT SHOULD BE INCLUDED IN THE FORMATION DOCUMENTATION**

L) MOI

SELECT TYPE OF PRECEDENT MEMORANDUM OF INCORPORATION (MOI)
TO BE UTILISED (SEE BELOW) (Templates available on website)

<u>Type of Entity</u>	<u>MOI Filing requirements</u>
Private Companies	- Form CoR 15.1A (short form) or - Form CoR 15.1B (long form)
Personal Liability/Public Company/SOC	- Form CoR 15.1 B (long form compulsory)
Non-Profit Company	
- Without members	- Form CoR 15.1 C (short form) or - Form CoR 15.1D (long form)
- With members	- Form CoR 15.1 E (long form)

ALTERNATIVELY A UNIQUE MOI IS TO BE PROVIDED

Consent to act as Director

Section 66(7)(b) of the
Companies Act No 71 of 2008

Name of Company		Company Reg No	
-----------------	--	----------------	--

A. Consent

I, the undersigned, hereby consent to my appointment as director of the above-named company. I hereby certify that I am not disqualified from being a director in terms of section 69 of the Companies Act.

Signed: _____ Date: _____

Executive director

Non-executive director

Alternate director

To:

B. Personal Particulars

1. Title				
2. Surname				
3. Full forenames				
4. Former surname				
5. Date of birth	Year	Month	Day	
6. Identity number / Passport number				
7. Date of issue (ID / Passport)				
8. Date of appointment as director				
9. Residential address				
10. Business address				
11. Postal address				
12. Nationality				
13. Occupation				
14. Resident in South Africa (Yes / No)				
15. Gender				
16. Demographic (African, Asian, Coloured, White)				
17. Disability (yes / no)				
18. Personal income tax number				
19. Cell phone number				
20. E-mail address				

AS PER CIPC

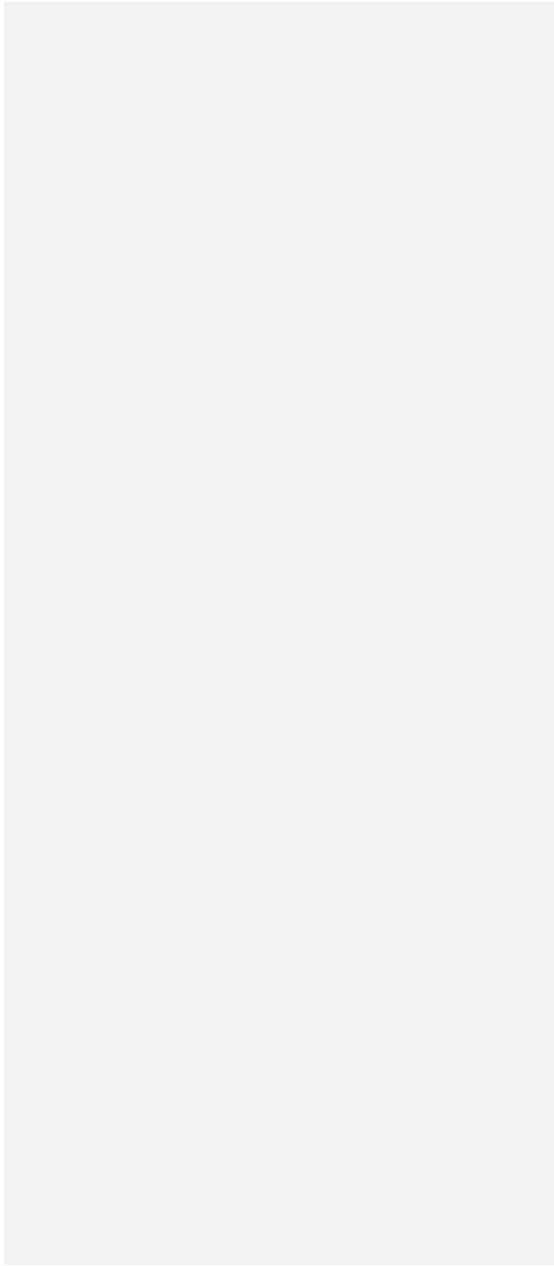
(List all Directorships / Close Corporation Memberships Held)

DIRECTOR NAME:

As at: 11-Mar-25

IDENTITY NUMBER:

Enterprise Number	Enterprise Name	Enterprise Status	Director Status



Definition of "Politically Exposed Person"

A "Politically Exposed Person" (PEP) and "Prominent Influential Persons" (PIPs):

Is the term used for an individual who is or has in the past (preferably 1 year after giving up any political function) been entrusted with prominent public functions in a particular country. The term should be understood to include persons whose current or former position can attract publicity beyond the borders of the country concerned and whose financial circumstances may be the subject of additional public interest. In specific cases, local factors in the country concerned, such as the political and social environment, should be considered when deciding whether a person falls within the definition. PIP refers to local influencers, such as religious leaders or chiefs of provinces.

Definition of "related party" in terms of paragraph 10.1 of the JSE Listing Requirements:

"related party" means:

1. a material shareholder;
2. any person that is, or within the 12 months preceding the date of the transaction was, a director of the issuer or its holding company. For the purpose of this definition, a director includes a person that is, or within the 12 months preceding the date of the transaction was, not a director, but in accordance with whose directions or instructions the directors are or were accustomed to act;
3. any adviser to the issuer that has, or within the 12 months preceding the date of the transaction had, a beneficial interest, whether direct or indirect, in the listed company or any of its associates;
4. any person that is, or within the 12 months preceding the date of the transaction was, a principal executive officer of the issuer, by whatever position he may be, or may have been, designated and whether or not he is, or was, a director;
5. the asset manager or management company of a property entity, including anyone whose assets they manage or administer;
6. the controlling shareholder of the persons in paragraph 5;
7. an associate of the persons in paragraph 1 to 6 above.

Definition of “associate” in terms of the JSE Listing Requirements:

“associate” in relation to an individual means:

1. that individual's immediate family; and/or
2. the trustees, acting as such, of any trust of which the individual or any of the individual's immediate family is a beneficiary or discretionary subject, including trustees of a trust without nominated beneficiaries, but who have been provided with a letter of wishes or similar document or other instruction, including a verbal instruction, naming desired beneficiaries (other than a trust that is either an occupational pension scheme, or an employees' share scheme that does not, in either case, have the effect of conferring benefits on the individual or the individual's family); and/or
3. any trust, in which the individual and/or his family referred to in 1 above, individually or taken together have the ability to control 35 % of the votes of the trustees or to appoint 35% the trustees, or to appoint or change 35 % of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust; and/or
4. any company in whose equity securities the individual or any person or trust contemplated in 1 or 2 above, taken together, are directly or indirectly beneficially interested, or have a conditional, contingent or future entitlement to become beneficially interested, and that the individual or any person or trust contemplated in 1 or 2 above are, or would on the fulfilment of the condition or the occurrence of the contingency be, able:
 - a. to exercise or control the exercise of 35% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
 - b. to appoint or remove directors holding 35% or more of the voting rights at board of directors' meetings on all, or substantially all, matters; or
 - c. to exercise or control the exercise of 35% or more of the votes able to be cast at a board of directors' meeting on all, or substantially all, matters; and/or
5. any close corporation in which the individual and/or any member(s), taken together, of the individual's family are beneficially interested in 35% or more of the members' interest and/or are able to exercise or control the exercise of 35% or more of the votes able to be cast at members' meetings on all, or substantially all, matters; and/or
6. any associate as defined below with reference to a company of the company referred to in 4 above. For the purpose of 4(a), (b) and (c) above, where more than one director of the same listed company is directly or indirectly beneficially interested in the equity securities of another company, then the interests of those directors and their associates will be aggregated when determining whether such a company is an associate of any one director of such listed company.

“associate” in relation to a company means:

1. any other company that is its subsidiary, holding company or subsidiary of its holding company; and/or

2. any company whose directors are accustomed to act in accordance with the company's directions or instructions; and/or
3. any company in the capital of which the company, and any other company under 1 or 2 taken together, is, or would on the fulfilment of a condition or the occurrence of a contingency be, interested in the manner described in 4 above; and/or
4. any trust that the company and any other company under 1 and 2 above, individually or taken together, have the ability to control 35 % of the votes of the trustees or to appoint 35% of the trustees, or to appoint or change 35 % of the beneficiaries of the trust. Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes to that of a trust.

Without derogating from the above, and for the purposes of this definition, the term trust may also be replaced with any other vehicle or arrangement set up for similar purposes;

[JSE Listing Requirements Service Issue 27_1](#)

1. LEGISLATION, REGULATIONS AND GOVERNANCE FRAMEWORKS

1.1 The Companies Act 71 of 2008 (“The Act”)

The Act is a legal framework that governs the operation and management of companies in South Africa. One of the key sections is Section 75, which deals with the duties and responsibilities of directors when it comes to the interests of the company. Directors of a company have a fiduciary duty to always act in the best interests of the company. This means that they must put the interests of the company ahead of their own personal interests or those of any other party.

1.2 Memorandum of Incorporation (“MOI”)

*Refer to the Company’s MOI regarding each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) disclosure requirements.

1.3 King IV guidelines

Principle 7 emphasises the importance of transparency and accountability in corporate governance. According to these guidelines, directors are required to declare any personal financial, economic, and other interests that might conflict with the interests of the company. This includes directorships, shareholdings, and involvement in trusts held by the member and related parties at least annually, or whenever there are significant changes. The aim is to ensure that all potential conflicts of interest are disclosed and managed appropriately to maintain the integrity of the board’s decisions. King IV, however, remains governance guidelines and is not mandatory.

2. APPLICATION OF THE ACT

2.1 Personal financial interest when used with respect to any person means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed.

2.2 Section 75 of the Companies Act applies to a Director and includes, an alternate director, a prescribed officer; and a person who is a member of a committee of a board of a company, irrespective of whether the person is also a member of the company’s board.

2.3 A *related person* when used in reference to a director, includes the following –

- an individual is related to another individual if they are married, or live together in a relationship similar to a marriage; or are separated by no more than two degrees of natural or adopted consanguinity or affinity; and
- an individual is related to a juristic person if the individual directly or indirectly controls the juristic person; and
- a juristic person is related to another juristic person if either of them directly or indirectly controls the other, or the business of the other, or is a subsidiary of the other; or a person directly or indirectly controls each of them, or the business of each of them and includes a second company of which the director or a related person is also a director, or a close corporation of which the director or a related person is a member.

2.4 Section 75 of the Companies Act does not apply to –

- a director of a company in respect of a decision that may generally affect all of the directors of the company in their capacity as directors, or a class of persons, despite the fact that the director is one member of that class of persons, unless the only members of the class are the director or persons related or inter-related to the director; or in respect of a proposal to remove that director from office as contemplated in section 71,
- a company or its director, if one person holds all of the beneficial interests of all of the issued securities of the company and is the only director of that company.

3. GENERAL ANNUAL DECLARATION

- 3.1 *Section 75 (4)* of the Companies Act stipulates that at any time, a director **may** disclose any personal financial interest in advance, by delivering to the board, or shareholders a notice in writing setting out the nature and extent of that interest, to be used generally for the purposes of this section until changed or withdrawn by further written notice from that director.
- 3.2 The Director may therefore exercise his or her discretion to disclose any conflict on an annual basis and to ensure it remains updated and relevant. It is noted that should a director not disclose the existence of any conflict, he or she would be at risk of not being able to enforce the protection and limitation of the director's personal liability afforded by the Business Judgement Rule.

4. AGENDA DECLARATION

- 4.1 *Section 75 (5)* stipulates that if a director of a company, has a personal financial interest in respect of a matter to be considered at a meeting of the board, or knows that a related person has a personal financial interest in the matter, the director –
- must** disclose the interest and its general nature before the matter is considered at the meeting; and
 - must** disclose to the meeting any material information relating to the matter, and known to the director; and
 - may** disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors; and
 - if present at the meeting, **must** leave the meeting immediately after making any disclosure contemplated in paragraph (b) or (c); and
 - must** not take part in the consideration of the matter, except to the extent contemplated in paragraphs (b) and (c); and
 - while absent from the meeting in terms of this subsection –
 - is to be regarded as being present at the meeting for the purpose of determining whether sufficient directors are present to constitute the meeting; and
 - is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - must** not execute any document on behalf of the company in relation to the matter unless specifically requested or directed to do so by the board.
- 4.2 This disclosure must therefore be made in writing and must include details of the nature

and extent of the conflict and may disclose anything of value to the company.

- 4.3 Once the conflict has been disclosed, the board of directors must decide whether or not to approve the transaction. If the board decides to approve the transaction, they **must** do so in a manner that is in the best interests of the company.
- 4.4 It is noted that if a director does not disclose a conflict of interest and enters into a transaction with the company, he or she may be held liable for any loss that the company suffers as a result. This could include fines, penalties or even criminal charges.

5. EXEMPTIONS

- 5.1 Personal financial interest when used with respect to any person does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment.
-

EXAMPLE OF INAUGURAL MINUTES

EXAMPLE COMPANY PROPRIETARY LIMITED

REGISTRATION NUMBER 2014/123456/07

MINUTES OF THE INAUGURAL MEETING OF THE SHAREHOLDER(S) OF THE COMPANY HELD AT THE REGISTERED OFFICE OF THE COMPANY ON {DATE OF INCORPORATION} AT {TIME}

PRESENT: {Name & Surname} - in the chair

MEMORANDUM OF INCORPORATION (MOI): The Chairperson reported that the Company had been incorporated on {date of incorporation}. The original memorandum of incorporation was tabled.

APPOINTMENT OF DIRECTOR: It was noted that {Name & Surname} had been appointed the first director of the Company.

APPOINTMENT OF PUBLIC OFFICER Resolved that, subject to the approval of SARS, {Name & Surname} be and he is hereby appointed the public officer of the Company.

APPOINTMENT OF AUDITORS It was noted that in terms of the MOI, the Company elects to be audited. Accordingly, the appointment of {Name & auditor} as auditors to the Company was confirmed.

REGISTERED OFFICE AND POSTAL ADDRESS: It was noted that the registered office and postal address of the Company is situated at {Insert Registered address & Postal address}

SHARE CERTIFICATES: RESOLVED
That share certificates issued by the Company be signed by one director and the secretary on behalf of the Company.

AUTHORISED SHARE CAPITAL: It was noted that the authorised share capital of the Company comprises 1 000 ordinary shares of NPV.

ALLOTMENT OF SHARES: It was noted in terms of the MOI, the following initial shares have been allotted to :-

{Name & Surname} - one hundred ordinary shares of NPV

UNISSUED SHARE CAPITAL: It was noted that in terms of the MOI, the unissued share capital of the Company be and is hereby placed under the control of the directors.

FINANCIAL YEAR END: It was noted that the financial year end of the Company will be the last day of February each year.

TERMINATION: There being no further business the meeting then ended at 10.25 am.

READ AND APPROVED AS A TRUE RECORD OF THE PROCEEDINGS.

Date

Chairperson

CERTIFICATE NO.

1

NUMBER OF SHARES

100

Share Certificate

EXAMPLE COMPANY PROPRIETARY LIMITED

(Incorporated in the Republic of South Africa)

2014/123456/07

This is to certify

that MR JOHN DOE

of 71 NORTH ROAD, JOHANNESBURG,
2196

is the Registered Proprietor of

DISTINCTIVE NUMBERS		NUMBER OF SHARES
FROM	TO	
INCLUSIVE		100

Fully Paid Shares of R 0 (cents)

numbered as per margin inclusive, in the above-named Company, subject to the Memorandum of Incorporation and the Rules and Regulations of the Company.

Given at JOHANNESBURG on this 20

Ref:

day of

or

TRANSFER OF SHARES RESTRICTED

Secretary

Director

EXTERNAL COMPANY (Section 23 and Regulation 20)

Formation Requirements:

- Form CoR 20.1 Registration of External Company CIPC filing fee R400. Kindly note that on the Form CoR 20.1, **the physical and postal address of the principal office of the external company in RSA** is to be recorded as well as the principal physical and postal address of the “parent” company outside of RSA. This Form is to be accompanied by :-
- Annexure 1 (particulars of directors. NB Directors must be the same as that of the “parent” company);
- MOI or comparable document of the “parent” company (notarially certified copy thereof, translated if required, accompanied by a translation certificate);
- Certificate of Incorporation or comparable document of the “parent” company;
- Form CoR 21.1 **Notice of principal registered office and postal address in RSA (with reference to underlined notes above and Section 6 of the course file)**;
- Form CoR 21.2 Notice of natural person authorised to accept service. (Section 23(3) and Regulation 21) (Old Act Form CM 37), i.e., usually the same as the RSA resident appointed the public officer of the company;
- Certified recent identifiable copies of RSA ID’s/Foreigner’s passport of all initial directors and incorporators (as opposed to subscribers in Old Act), company secretary or filing agent, or any other person who has signed and submitted the formation documentation with CIPC for and on behalf of the incorporators or directors. If a juristic person, a power of attorney is required;
- A Mandate is required utilising the filing agent or other person or juristic person to submit the formation documentation with CIPC (optional however recommended).

Upon registration of the external company, CIPC will issue a Form **CoR 20.2 Registration Certificate of external company.**

CIPC NOTICE NO: [45 OF 2025](#)

DATE OF ISSUE: 19/09/2025

AUTOMATION OF REGISTRATION OF EXTERNAL COMPANY (FORM COR20.1)

The Companies and Intellectual Property Commission (CIPC) remain committed to delivering efficient, customer-focused services and streamlining the submission and filing of company-related applications. In line with this commitment, we are pleased to announce the automation of the **Registration of External Company (Form CoR20.1)** on the **CIPC e-Services platform**, effective **29 September 2025**.

From this date forward, all applications to register an external company must be submitted electronically via the e-Services platform. The dedicated email address previously used for such submissions (companydocs@cipc.co.za) will no longer accept such documents from the indicated date.

The new automated service enables users to electronically capture the required form information, upload supporting documentation, and receive a reference number upon submission. This reference number, formerly known as a tracking number, will be used to monitor the progress of the application. It is important to note that submission alone does not constitute filing. An application will only be considered officially filed once the CIPC back office has reviewed and approved the submitted information and supporting documents, and payment has been successfully made via the CIPC card payment facility.

Applicants are reminded that only once the back office confirms that all legal, procedural, and submission requirements have been met, and payment has been received will the application be deemed complete and filed.

To support this transition, a step-by-step user guide and a list of frequently asked questions are available. We encourage all users to familiarise themselves with these resources to ensure a smooth application process.

Applications submitted prior to **29 September 2025** will continue to be processed through the existing system. Customers are advised not to submit a new application via the online platform if a previous application is still pending, as this may result in the unintended registration of a second external company.

As part of the electronic service, the following documents must be uploaded:

- A mandate authorising the filer to act on behalf of the foreign company;
- A resolution from the directors approving the registration in South Africa;
- A certified copy of the certificate of incorporation;
- A certified copy of the company's governance or constitutional documents;
- A certified translation certificate, if any documents are in a foreign language;
- A securities register (if a for profit external company).

Proof of address will not be required, as CIPC will validate addresses electronically. The registration fee of **R400** is payable only after the application has been approved by the back

office, and payment must be made using the CIPC card payment system. The declining balance method is being phased out.

Additionally, there is no need to reserve a company name, as the system will automatically generate a name during the registration process.

For further assistance, please visit www.cipc.co.za or refer to the enquiries section for guidance on submitting your queries.

We thank you for your cooperation and look forward to your continued compliance with the updated registration process.

For further assistance, kindly refer to www.cipc.co.za/enquiries for guidance on how to refer your enquiry.

[Notice 45 of 2025](#)

CIPC PRACTICE NO: [4 OF 2025](#)

DATE OF ISSUE: 7 OCTOBER 2025

ADDITIONAL INFORMATION REQUIRED FOR REGISTRATION OF EXTERNAL COMPANIES VIA ONLINE PLATFORMS

The revised Practice Note 6 of 2022, and the section relating to Registration of External Companies (CoR20.1 and supporting documents) on Practice Note 1 of 2024 are hereby withdrawn and replaced with this practice note as per the date communicated on the CIPC website for the release of the automation of registration of external companies (Form CoR20.1) in terms of Regulation 4(2)(b) of the Companies Regulation, 2011. This Practice Note is applicable to the registration of external companies in terms of Section 24 of the Companies Act, 2008 read with Companies Regulation 20.

To ensure that CIPC has relevant and usable information relating to external companies' additional information is required.

- CIPC requires both the physical and postal address of the principal office of the external company both within and outside of the Republic.
- As from the release date of the automation of registration of external companies, it will not be necessary to upload proof of physical address of the physical address within South Africa – such validation will occur electronically.
- The industry within which the external company will operate within South Africa must be indicated.
- The person who is authorised to accept service of documents on behalf of the external company may only be a natural person and the physical and postal address must be within South Africa. The following additional information of such person will be required:
 -
 - Name and surname;
 - South African Identity Number;
 - Postal address within South Africa;
 - Physical address within South Africa; and
 - Email and cell phone number.

A juristic person may be a director of an external company, and in such instance the following additional information of such juristic director is required: –

- Name of the juristic person;
- Registration number of the juristic person; and
- E-mail and cell phone number for the juristic person.

As part of the electronic service, the following documents must be uploaded:

- A mandate authorizing the filer to act on behalf of the foreign company;
- A resolution from the directors approving the registration in South Africa;

- A certified copy of the certificate of incorporation;
- A certified copy of the company's governance or constitutional documents;
- A certified translation certificate, if any documents are in a foreign language;
- A securities register.

Refer to the latest notice or practice note relating to certification of documents.

For further assistance, please visit www.cipc.co.za and refer to the enquiries section for guidance on submitting your queries.

[Practice note 4 of 2025](#)

PRE-INCORPORATION CONTRACTS (Section 21 and Regulation 35)

Pre-incorporation contracts are defined as an agreement entered into before the incorporation of a company by a person who purports to contract "in the name of or on behalf of" the company with the intention or understanding that once the company has been incorporated, it will then be bound by the agreement.

(Old Act Section 35 the wording "in the name of, or on behalf of" is substituted by the New Act, Section 21 "professing to act as agent or trustee for")

The new definition therefore embraces a person who acts either as a principal or as an agent.

Common Law **Stipulatio Alteri** Concept still applies, i.e., a person may still contract as principal (i.e., in his own right) with a third party for the benefit of a company not yet incorporated. Law now codified.

New Act requirements with regard to Pre-Incorporation Contracts:-

- the party to it must profess to act as an agent for the company;
- the contract must be in writing;
- MOI to include requirement with regard to ratification and adoption of pre-incorporation contracts.

(Old Act – same as above, except that the Memorandum and Articles of Association did not require a clause ratifying or adopting the pre-incorporation contract.)

Anyone who does anything contemplated under this section is jointly and severally liable for liabilities created in the pre-incorporation contract whilst so acting on behalf of the entity prior to the incorporation of the company. If a company rejects an agreement or action, a person who bears any liability in terms of Section 21 may claim from the company any benefit it has received or is entitled to receive in terms of the agreement or action.

Within 3 months of incorporation date, the company, via its Board members, must either completely, partially or conditionally ratify or reject any pre-incorporation contract or other action purported to have been made or done in the company's name or on its behalf. If not attended to, the company will be deemed to have ratified the agreement or action.

Liability of a person acting for or on behalf of the company is discharged once a pre-incorporation contract is ratified and the agreement becomes enforceable against the company.

A person may voluntarily give notice to a company of the existence of a pre-incorporation contract or action by delivering to the company a Form CoR 35.1. In this instance, a copy thereof must be filed with CIPC.

If the board of the company has decided to completely or partially reject or ratify a pre-incorporation contract or action that it has been made aware of (i.e. the company has been issued with a Form CoR 35.1), the company must within 5 business days after taking a decision in this regard file a Form CoR 35.2 with CIPC, a copy of which must be sent to each materially affected person/entity who is a party to the contract.

CONVERSION OF COMPANIES

The New Act is silent in this regard in that it does not prescribe a process for conversion.

Special resolution requirement (refer to Section 4 of the course file).

Special resolutions must be lodged with CIPC to:

- convert a public company to a private company and adoption of applicable MOI (Old Act required a notice to be published in the Government Gazette and sent to all of the company's creditors).
- conversion a private company to a public company and adoption of applicable MOI.
- conversion a private/public company to NPC, cancellation of capital and adoption of applicable MOI.
- conversion an NPC to another type of entity is not allowed. See Schedule 1 and 2 Fundamental Transactions (1)(a). (As was the case in the Old Act).

Note:

The registration number of converted companies will remain the same except for the two last digits (suffix) (identifying type of entity) as was the case in the Old Act. This does not apply in the instance of the conversion of a close corporation to a company, with reference to page 9 of this section of the course file.

CONVERSIONS OF CLOSE CORPORATIONS (Schedule 2 of the Act: Annexure 2: Table CR 2B of the Regulations/ Regulation 18)

In terms of the New Act, the conversion of the close corporation to a company is considered a continuation of the juristic person, albeit under a different form. As a result, the initial date of incorporation of the close corporation will remain the date of the company's registration. CIPC however utilises the date of conversion of the close corporation to a company to determine when annual return payment is due (refer to Section 8 of the course file).
(Old Act date of conversion considered as the new date of incorporation of company).

Procedure:

- If the conversion was undertaken within 3 years of the date of implementation of the New Act, (i.e., before 1 May 2014), no CIPC filing fee was payable. Thereafter the same CIPC filing is payable on the Form CoR 15.1, dependent on whether a standard or unique MOI was utilised;
- Filing of Form CoR 18.1 with CIPC – Application to convert a close corporation, accompanied by :-
 - Formation documentation (refer to pages 2 and 3 of this section's course notes).
 - written statement of consent of members holding a minimum of 75% of the members' interest. (Old Act requirement – 100%).
 - Accounting officer's letter. (As was required by the Old Act. Not listed as a requirement in the New Act, therefore optional, however recommended.)
 - MOI (applicable to type of entity close corporation is converting into)
- If a close corporation is converting to a public entity or is in future required to be audited (with reference to Section 8 of the course file), Forms CoR 44 is required to advise on the appointment of auditor and/or audit committee and company secretary if converted to a public company).
- A Mandate is required authorising the filing agent or other person or juristic person to submit the formation documentation with CIPC (optional however recommended).
- Recent, certified, identifiable copies of the RSA ID's of all directors/company secretary/lodging agent.

Kindly note that the appointment of directors is to be included on Form CoR 14.1 Annexure A, however in some instances CIPC has in addition requested the submission of the Form CoR 39 (refer to section 7 of the course file).

Should CIPC require any additional information or documentation in this regard, they will request the same via a Form **CoR 18.2 Notice requiring further particulars.**

If CIPC registers the conversion, they will issue a **Form CoR 18.3 Registration Certificate.**

CIPC has advised that the Forms CoR 18.3 will be amended to include the date of conversion and the name and registration number of the cc converted. The registration number of the company converted from a close corporation will change, as was the case in the Old Act.

Documents as above to be emailed to companydocs@cipc.co.za. Company formation fee will be charged.

ADDRESS OF MEMBER

DATE

The Commissioner
Companies and Intellectual
Properties Commission
PO Box 429,
PRETORIA.
0001.

Dear Sir,

NAME OF CC
REGISTRATION NO :XXXXXXXX

I, _____ the sole member of the above close corporation hereby consent to the conversion of the above Close Corporation to a Company by the name of:XXXXXXXX XX:XXXXXXXXX (PROPRIETARY) LIMITED of which I undertake to become the sole shareholder upon such conversion.

Yours faithfully,

TO BE PREPARED ON ACCOUNTING OFFICER'S LETTERHEAD – VOLUNTARY DOCUMENT

TO WHOM IT MAY CONCERN:

Dear Sirs

**NAME OF CC
REGISTRATION NO:**

We confirm that we are the accounting officer of the abovementioned Close Corporation which wishes to convert to a private company, and we hereby certify that the share capital of the proposed company will not be greater than the excess of the fair value of the assets to be acquired by the company over the liabilities to be assumed by the company by reason of the conversion.

We further state that, based on the performance of our duties under the Close Corporations Act of 1984, we are not aware of any contravention of the said Act by the Close Corporation or its member, or of any circumstances which may render the member of the Close Corporation, together with the Close Corporation, jointly and severally liable for the Close Corporation's debts.

Yours faithfully

**NAME OF AUDITORS
Practice Number:
Member of The South African Institute of Chartered Accountants (SAICA)**

NAME OF PARTNER AND PRACTICE/MEMBERSHIP Number

RULES (COMPANY CHARTER OF GOVERNANCE) (Section 15 and Regulation 16)

New concept introduced by the New Act.

Rules, which are optional (i.e., an alterable provision) can be instituted either **upon incorporation of the entity, i.e., already included in the MOI (refer to the notes on page 3 of this section of the course file)** or when Rules are later introduced by the directors, provided allowed for in the MOI.

The Board, to the extent that the MOI provides, may make, amend or repeal any necessary or incidental rules relating to the governance of the company in respect of matters not already addressed in the MOI or the Act.

NB: If Rules are in conflict with the MOI, the Act or MOI prevails.

Listed entities are prohibited from making Rules in terms of JSE/AltX regulations.

Procedure:

- Rules to be published, i.e., sent by ordinary mail to all shareholders. Effective/Binding on an interim basis either 10 business days after the date published or at the date specified on the Form CoR 16.1.
- Form CoR 16.1 Notice concerning the company's rules, accompanied by a copy of the Rules to be filed with CIPC within 10 business days of being published. Filing fee R100.
- Form CoR 16.2 Notice of results of vote on company rules (i.e., outcome of shareholders' vote, via ordinary shareholders resolution) to be filed with CIPC within 10 business days of the shareholders voting on the rules. CIPC filing fee R100.
 - If ratified by the shareholders, the rules become effective/binding on a permanent basis.
 - If amended, altered or repealed by the shareholders, a further Form CoR 16.1 is to be filed with CIPC, within 10 business days thereof, clearly indicating the extent or effect of the change or the non-ratification of the rules by the shareholders.
 - If not ratified by the shareholders, a similar rule or rules cannot be made within 12 months of this date unless approval of the shareholders is granted by ordinary resolution.
 - Failure to ratify any of the rules does not affect the validity of any action taken during the period in which the rules were effective on an interim basis.

SECTION 4

RESOLUTIONS/ MEETINGS AND MINUTES (PART F OF CHAPTER 2 – Section 56; 62; 63 and 64)

Entities which have only one shareholder and one director need not comply with the formal requirements that regulate the exercise of shareholders voting rights nor the corporate governance provisions of the Act relating to meetings and resolutions of directors and shareholders, unless required to do so as per its MOI. (Sections 57 (2) and (3) of the new Companies Act 2008)

Note:

- Minutes of all meetings and all resolutions are to be sequentially numbered.
- There is no longer a provision in the New Act for an auditor to ensure that the minutes of all meetings/resolutions have been kept in proper form.
- The New Act also provides for meetings of debenture holders.

DIRECTORS

DIRECTORS' RESOLUTIONS (Section 74)

- May be round-robin (i.e., in lieu of physical holding of meeting). Decisions adopted by written consent by the majority of the directors given in person or by electronic means are valid, provided that every director has received notice of the matter to be decided upon. (NB round robin resolutions do not allow for debate on the matter at hand, neither the voicing of any objection to this method of decision making nor the calling of an actual meeting).
- Resolutions adopted by the Board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise (Section 73(7)(a) and (b))

DIRECTORS' MEETINGS (Section 73)

- May be called by any director at any time (review any MOI requirement) or by at least 25% of the Board of Directors if the Board has at least 12 members; or at least 2 directors in any other case.
- Reasonable notice period required in terms of common law. (MOI to dictate).
- Physical attendance is not mandatory, a meeting may be conducted entirely electronically or with some directors participating in this manner (MOI to dictate).
- Each director is to hold at least 1 vote (review MOI requirement) and a majority vote (i.e., 51%) is required to pass an ordinary resolution.

SHAREHOLDERS (PART F OF CHAPTER 2 (SECTIONS 57 – 78))

SHAREHOLDERS' RESOLUTIONS

- Ordinary or special resolutions may be round-robin (i.e. in lieu of the physical holding of meeting). Round-robin resolutions are considered voted for and adopted in writing within 20 business days of submission to shareholders, provided they are supported by a sufficient number of votes required to pass an ordinary and or special resolution as would have been required at a properly convened shareholders meeting, provided that every shareholder has received notice of the matter to be decided upon. (NB round robin resolutions do not allow for debate on the matter at hand, neither the voicing of any objection to this method of decision making nor the calling of an actual meeting).
- An election of a director may be conducted by written polling (i.e., voting must be in accordance with the voting rights attached to the securities concerned of all shareholders entitled to vote in relation to the election of that director).
- Within 10 business days after adopting a resolution, or conducting an election of directors, the company must deliver a statement detailing the results of the vote, consent process or election to every shareholder who was entitled to vote on the resolution.
- Any business required by the Act to be conducted at an AGM (Section 60(5)) by any type of company requiring to hold an AGM may not be dealt with via shareholder round robin resolutions. In addition, no fundamental transactions (including amalgamations/mergers; disposal of whole or greater part of the assets/undertakings of a company; scheme of arrangement) (Section 115(2)(a) and (b)) may be dealt with via round robin resolutions. In these instances, the company must hold a shareholders meeting.

SHAREHOLDERS' MEETINGS

- Any board member, or anyone specified in the MOI may call a shareholders meeting or holders of at least 10% of the voting rights (MOI may specify lower %) may call a shareholders' meeting by written demand, specifying the purpose of holding the meeting. A court, on application by the company or any shareholder, may set aside such a demand if considered frivolous, vexatious or if the matter has already been considered and decided upon previously by the shareholders.
- Notice for the general or annual general meeting must be in writing and must specify the date; time; venue; purpose of the meeting; proposed special/ordinary resolutions; % of voting required to pass the specific resolution and the reason and effect of the passing of each of the respective resolutions.
- Notice period – 15 business days for public companies and NPC's and 10 business days for private companies and any other company. (Old Act stated 14 clear days for ordinary resolutions and 21 clear days for special resolutions) **(see example – voluntary notice to shareholders – Form CoR 36.2)**
- Waiver of notice period or shortened notice period allowed (Section 62(1) provided **all** shareholders entitled to exercise their vote are present at the meeting and agree thereto. (MOI to dictate). It is impossible for entities with many shareholders. (Old Act – Form CM 25 (shorter notice period) required the consent of a minimum of 95% of the shareholders, whilst Form CM 25A (waiver of notice

period) required the consent of 100% of the shareholders).

Members can attend in person or be represented by one or more written proxy/ies (who need not be a shareholder of the company) to participate, speak and vote at a shareholders meeting on behalf of the shareholder. A proxy may be valid for a specific meeting only or for a period of up to 1 year. **(See example – voluntary proxy – Form CoR 36.1).**

Proxy/ies are revocable in writing. Members may elect to be represented by a letter of representation or a power of attorney (greater power over a proxy).

Proxy/representative must produce satisfactory identification. In terms of the New Act, proxies are to be delivered to the company before the proxy exercises any rights of the shareholder at the meeting. (MOI may dictate otherwise, however this provision could be considered to be invalid according to latest case law (see CD). (Old Act: minimum 48 hours or lesser period if so contained in the company's memorandum and articles of association).

- Physical attendance is not mandatory, a meeting may be conducted entirely electronically or with some shareholders participating in this manner, however all shareholders must be able to communicate simultaneously. (Public companies must ensure that this is administratively possible).
- Quorum – no less than 25% of the holders of the voting shares to be present at the commencement of the meeting and at the time a matter is to be considered (MOI to dictate), however the Act states that at least 3 shareholders must be present (if more than 2 shareholders). In any event 25% of the holders of the voting shares must be present on the consideration of a special resolution. If not present within 1 hour of the time scheduled, the meeting must be adjourned (Section (4) – (7)). If no quorum at the adjourned meeting, whatever number of shareholders are present in person or by proxy will be deemed to constitute a quorum. Sections 64(10) to (13) regulates the adjournment of shareholders meetings should a valid quorum not be present.

ANNUAL GENERAL MEETINGS (AGM)

- All public companies and all other types of companies, if so required in terms of their MOI's, and all public companies must hold a physical AGM (Section 60) within 18 months after incorporation and thereafter once in every calendar year, but no more than 15 months after the date of the previous AGM. The Companies Tribunal may, on good cause shown, grant an extension of time in which to hold an AGM. (Regulation 166 (2)). (Old Act Form CM 17 – Application of extension of time).
- AFS (annual financial statements) are required to be prepared within 6 months after the end of an entity's financial year end or such shorter period as may be appropriate to provide for the required notice period for the calling of an AGM (Section 30 of Part C Chapter 2). (Old Act: Similar requirements).
- AFS are to be approved by the directors and presented to the shareholders at the AGM.
- External auditors are entitled to attend the AGM of a public company. (Old Act – legal requirement)

- **VOTING**

- Voting rights/powers are to be defined per category of share.
- Voting may be either on show of hands (i.e., one vote per shareholder) or on a poll (secret ballot utilised and calculated on the number of shares or securities held). A minimum of 5 persons entitled to vote on the matter at hand or persons entitled to exercise at least 10% of the voting rights are entitled to demand a poll, prior to the resolution being tabled for consideration.
- The holders of 75% of the voting rights, present in person or by proxy, must vote in favour of the passing of a special resolution. (The MOI to dictate, may not be less than 65%).
- Holders of at least 51% of the voting rights are required to vote in favour of the passing of an ordinary resolution. (The MOI may dictate a higher percentage).

Margins of at least 10% are required between % voting requirements for special and ordinary resolutions.

SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3))

Sub-section 12 provides that the MOI may require a special resolution to approve any other matter not contemplated below.

The New Act provides for special resolutions to take effect upon the date of filing i.e., date of delivery, or date of registration by CIPC or any other date as inserted on documentation as long as the date is later than the incorporation date (i.e., date on NOI) (Section 16(9)). (Refer to Article from CIPC re: Non-Binding opinion with specific reference to rejected special resolution. Special resolutions are only effective once REGISTERED or ACCEPTED by CIPC.

Notes:

- **NB Not all special resolutions passed require filing with CIPC (as was the case in the Old Act), only those highlighted/bolded in red below require filing with CIPC: -**
- **an entity may elect to file all special resolutions with CIPC for record purposes, under cover of a letter, explaining the reasons for the filing thereof. CIPC filing fee – R80**
- **draft special resolutions may be submitted to CIPC for their prior approval. CIPC filing fee – R150.**

Commented [S9]: Section 16: Amending the MOI 10 business days after receipt of the Notice of Amendment by the Commission, unless endorsed or rejected with reasons by the Commission prior to the expiry of the 10 business days period; or such later date, if any, as set out in the Notice of Amendment

Section 16 and 17

Amendment of the MOI (existing Memorandum and Articles of Association) (CoR 15.2); including:-

change of name; deleting; altering, replacing or inserting new provisions or any combination thereof, including ring fencing conditions (removal; amendment or new addition thereto) (CoR 15.2 Annexure A); amendments to share capital, including increase; cancellation; conversion and creating or altering the existing rights of shareholders;

OR

Adoption of MOI (either replacing existing Memorandum and Articles of Association or on conversion of company to another) (CoR 15.2) Transitional provision – 2-year grace period w.e.f. 1 May 2011 to adopt a new MOI at no cost, however this was not compulsory (refer to Section 3 of the course file). If required in terms of a Court order, only an ordinary board resolution is required.

OR

Notice of Alteration of the MOI (CoR 15.3) in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document.

- Notice of Translation of MOI. (CoR 15.4)

- Notice of Consolidation of MOI (CoR 15.5)

Item 6 Schedule 5

Notice of a Board Resolution to Convert Par Value Shares (CoR 31) (accompanied by Form CoR 15.2). If the affected class of shares are in issue, the Directors Report is to also accompany the special resolution documentation (refer to Section 5 of the course file).

Section 80

Notice of a Special Resolution to Wind-up a Solvent Company (CoR 40.1) (refer to Section 9 of the course file and refer to Chapter 14 of Companies Act no. 61 of 1973 and Item no. 9, Schedule 5 of the New Act) with regard to the requirements for the winding up of insolvent companies which is still applicable and not as yet repealed.

Section 82(5)

Notice of Foreign Registration of Company (CoR 40.2) (with reference to Section 2 of the course file).

- Approval of Directors' remuneration (basis of compensation) in profit companies, prior to payment thereof (Section 66(9)). May be passed for two years at a time and can be general or specific. Sections 65(11)(h) and 66(9) do not specifically require that the precise amount of the remuneration be mentioned in the special resolution, but rather that the basis for the compensation be set. (Specific reference to Non-executive directors' fees and amounts paid to executive directors, over and above their agreed to salaries).
- Ratifying actions by the company or its directors in excess of their authority. (Section 20(2))

SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3)) (cont/d)

- Approval of an issue of shares or a grant of rights/options to directors; prescribed officers (present and future); related and inter-related parties or a nominee for any such mentioned individual. (Section 41(a))
- Approval and issue of shares, securities which are convertible into shares, or rights exercisable for shares in a transaction or in a series of integrated transactions, if the voting power of the class of shares that are issued or issuable as a result of the transaction or series of integrated transactions will be in excess of 30% of the voting power of all the shares of that class held by shareholders immediately before the transaction or series of transactions (Section 41(3) 'and (4)). Ordinary Board resolution approval is required on the allotment/issue of shares, unless the above applies, or is an MOI requirement. (Not an option for public entities).
- Approval of the granting of financial assistance for the subscription of the company's securities or loans/financial assistance to directors, unless in terms of an approved employee share scheme. (Section 44 and 45).
- To revoke a resolution that gave rise to a dissenting shareholder appraisal right.
- Approval of a Board decision for the re-acquisition of shares (Ordinary Board resolution approval required on the re-acquisition of shares unless the under mentioned applies or it is an MOI requirement).

(Not an option for public entities).
- Any of the shares which are to be acquired from a director; prescribed officer; related and inter-related parties or a nominee for any such mentioned individual.
- Subject to the requirements of Sections 114 and 115 if, considered alone or together with other transactions in an integrated series of transactions, it involves the acquisition by the company of less than 5% of the issued shares of any particular class of shares.

Approval of Fundamental Transactions Part A of Chapter 5 (Sections 113 – 116 (inclusive))
NB: REMINDER all fundamental transactions (including amalgamations/mergers; disposal of whole or greater part of the assets/undertakings of a company; scheme of arrangement)

(Section 115(2)(a) and (b)) may not be dealt with via round robin resolutions. In these instances, the company must hold a shareholders meeting.

i) Amalgamations/Mergers – Notice of Amalgamation or Merger (Form CoR 89)

Definition:

Amalgamation – “a transaction between two or more companies resulting in the formation of one or more new companies holding all of the assets and liabilities of the merging entities; and the dissolution of the merging companies.”

SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3)) (cont/d)

Merger – “a transaction between two or more companies resulting in the survival of at least one of the merging companies, the vesting in the surviving entity/ies of all the assets and liabilities of the merging entities and may possibly include the dissolution of the non-surviving entity and the formation of a new entity.”

ii) Proposals for schemes of arrangement and compromise (Section 114 and 115)

Definition: “any arrangement between the company and holders of any class of its securities by way of:- consolidation of securities of different classes division of securities into different classes; an expropriation of securities; an exchange of securities; a buy-back of securities or any combination of these methods.”

iii) Disposal of business/greater part of assets (Section 112)

Takeover regulations Panel approval/exemption is required for all of the above-mentioned fundamental transactions (i) to iii) inclusive, unless:-

Fundamental transactions are as a result of :-

- a business rescue;
- entered into between two or more wholly owned subsidiaries of the same holding company;
- entered into between a wholly owned subsidiary of a holding company on the one hand and its holding company and one or more wholly owned subsidiaries of that holding company on the other hand

Notice to be sent to creditors with regard to proposed amalgamations and mergers. Form CoR 89 to be submitted to CIPC (with reference to the above)

In the instance where a holding company disposes of a subsidiary which constitutes a disposal of all or the greater part of the assets or undertaking of the holding company, **a special resolution is required in the holding company.**

If sanctioned by the court (i.e., the court may approve the passing of a special resolution if for example within 5 days of the date of the vote, holders of in excess of 15% of the voting rights opposed to the passing of the special resolution approach the court for recourse).

The company must satisfy all other requirements relating to fundamental transactions to the extent that the requirements are applicable to regulated companies. The TRP (Takeover Regulations Panel) will issue a compliance certificate in respect of the transaction or exempted transaction. TRP approval may be required in private company transactions (refer further to notes contained in Section 5 of the course file)

SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3)) (cont/d)

Procedure for Special Resolution Filing:-

A)

- Submit **Form CoR 15.2** Notice of Amendment of Memorandum of Incorporation with CIPC within 10 business days of the effective date of the amendment (i.e., date of approval by shareholders);

OR

- Submit **Form CoR 15.2 Annexure A** Notice of Amendment of Memorandum of Incorporation Notice of Ring-Fencing Provisions with CIPC within 10 business days of the effective date of the amendment (i.e., date of approval by shareholders);

OR

- Submit **Form CoR 15.3** Notice of Alteration of Memorandum of Incorporation with CIPC within 10 business days of the effective date of the amendment by the Board of the Company or any other individual authorised by the Board.

Accompanied by :-

- Publication of a notice of the alteration in any manner required or permitted by the MOI or rules of the company.
- If changing the name of the entity, the registered Form CoR 9.4. (CIPC filing fee for Form CoR 15.2 may be reduced if CoR 9.4 approved);
- If adopting new MOI, a copy thereof;
- recent identifiable certified copies of the RSA ID's of the company secretary or person (director) who signed the CoR 15.2 form.
- A mandate on the company's letterhead authorising the filing agent to submit the required documentation with CIPC for and on behalf of the company (optional however recommended).

CIPC filing fee for the abovementioned documentation is R250.

All of the abovementioned documentation is to be submitted "manually" via email to moi amendments@cipc.co.za for registration. Name changes ONLY to be submitted to namechange@cipc.co.za

OR

Name changes and an increase of share capital may be submitted online with CIPC. Log in, go to Transact, Name Changes/Share Capital and follow the prompts. An approved Cor 9.4 is required and an One Time Pin (OTP) will be sent to all the directors of the company. The name change will be automatic (no waiting period for CIPC to register).

SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3)) (cont/d)

- B) Submit **Form CoR15.4** Notice of Translation of Memorandum of Incorporation with CIPC accompanied by a sworn statement from the translator and a copy of the translated MOI. CIPC filing fee – R250.

OR

- C) Submit **Form CoR 15.5** Notice of Consolidation of Memorandum of Incorporation with CIPC accompanied by a copy of the consolidated version of the MOI and a sworn statement by a director/attorney/notary public that it is a true copy thereof. CIPC filing fee – R250. Should the MOI have been amended on a number of occasions, CIPC may request that the company submit a Consolidated Memorandum of Incorporation via a **Form CoR 15.6**.

OR

- D) Submit **Form CoR 31** **Notice of Board Resolution to convert par value shares (refer to Section 5 of the course file) (CIPC filing fee – Nil if undertaken within 2-year grace period), accompanied by a copy of the Directors Report in terms of Regulation 31(6) and (7) of the Companies Regulations 2011 (should the class of affected shares be in issue) and Form CoR 15.2. File a copy of the proposed resolution and report with SARS.**

OR

- E) Submit **Form CoR 40.1** Notice of Special Resolution to Wind-up Solvent Company with CIPC. CIPC filing fee – R250. Revert to page 10 of Section 9 of the course file which specifically deals with the additional requirements of winding up of solvent companies.

OR

- F) Submit **Form CoR 40.2** Notice of Foreign Registration of Company with CIPC. CIPC filing fee R250. (refer to Section 2 of the course file).

OR

- G) Submit **Form CoR 89** Notice of Amalgamation or Merger (one of the Fundamental Transactions) with CIPC. CIPC filing fee – R250

NOTE: Submission of any of the above documentation B TO G (inclusive) must be accompanied by :-

- A copy of the minutes of the shareholders meeting (or extract thereof) or round robin resolutions approving the passing of the special resolution. If the meeting is held and notice is given (a copy thereof, optional); if a shortened notice period is given (a copy thereof, optional) if notice is waived (a copy thereof, optional);
- recent identifiable certified copies of the RSA ID's of the company secretary or person (director) who signed the CoR 15.2 form;
- a mandate on the company's letterhead authorising the filing agent to submit the required documentation with CIPC for and on behalf of the company (optional however recommended).

This should not be regarded as legal advice.

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- SPECIAL RESOLUTION REQUIREMENTS (Section 16 and Regulation 15(2)(3)) (cont/d)

All of the abovementioned documentation is to be submitted “manually” via email to moiamendments@cipc.co.za for registration.

Procedure for Special Resolution Filing in terms of the Old Act):-

Documentation was required to be lodged with CIPRO within 1 month of the date of passing otherwise a penalty was incurred. If not lodged and registered with CIPRO within 6 months, the special resolution was declared null and void and required Court action to re-instate. Note: As per the Old Act, a special resolution was only effective on CIPRO's date of registration thereof. See choices of effective date as mentioned previously)

Voluntary Documentation, not required to be submitted to CIPC:-

- Form CoR 36.1 Security Holder Notice to Company and Proxies (proxy valid for 1 year). A template shareholder proxy addressed to the company.
- Form CoR 36.2 General Company Notice to Security Holders. A template company notice addressed to all shareholders of the company.
- Form CoR 36.3 General Notice to Holders of Beneficial Interests. A template notice addressed to a beneficial owner of a share by the nominee shareholder (i.e., the holder registered in the books of the company).

EXAMPLES OF SPECIAL RESOLUTIONS (PROXY/NOTICE/MINUTES/RESOLUTIONS)

NB NOTE WHAT TIME PERIOD IS REQUIRED IN THE MOI IN WHICH A PROXY IS TO BE SUBMITTED TO THE ENTITY PRIOR TO THE HOLDING OF THE MEETING. IF SILENT PROXY MAY BE PRODUCED AT THE MEETING PRIOR TO VOTING ON RESOLUTIONS. SATISFACTORY IDENTIFICATION OF THE PROXY IS REQUIRED.

PROXY

**NAME OF COMPANY
REGISTRATION NO.....**

I,..... of

Being a member ofProprietary Limited

Hereby appointof

or failing him..... of

or failing him.....of

as my proxy to vote for me and on my behalf at the shareholders meeting to be held on the day of or at any adjournment thereof to pass the undermentioned special/ordinary resolutions as follows :

RESOLUTIONS	In favour of	Against	Abstained
Resolution to			
Resolution to			
Resolution to			
Resolution to			

(indicate instruction to proxy by way of a cross in space provided above)

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this.....day of

Signature

Note :

A member entitled to attend and vote is entitled to appoint one or more proxy to attend, participate, speak and vote in his stead and such proxy need not also be a member of the company.

This proxy is valid for _____

This proxy is revocable upon written notice to the company by a Shareholder.

SHIRLJEN TRADING (PROPRIETARY) LIMITED
REGISTRATION NUMBER 2000/012345/07

**MINUTES OF A MEETING OF THE DIRECTORS HELD AT THE REGISTERED OFFICE OF
THE COMPANY ON 2000 AT 15H00**

PRESENT : Mr Aubrey Smith (in the chair)
Mr Michael Botha

CONSTITUTION: A quorum being present in terms of the Company's MOI, the Chairperson
declared the meeting duly constituted.

CONVENING OF GENERAL MEETING:

It was RESOLVED:

THAT a shareholders meeting be convened on at 16h00 for the purpose of
considering, and if thought fit, of passing, with or without modification, the following resolutions as
Special resolutions and Ordinary Resolutions:-

As Special Resolution no 1:
Change of Name

THAT the Company change its name from:

SHIRLJEN TRADING PROPRIETARY LIMITED TO
MY TEST COMPANY PROPRIETARY LIMITED

And that the Memorandum of Incorporation be amended accordingly.
There being no further business, the meeting terminated.

Signed as a correct record of the proceedings:

.....
CHAIRPERSON

.....
DATE

SHIRLJEN TRADING PROPRIETARY LIMITED
REGISTRATION NO 2000/012345/07

MINUTES OF A DIRECTORS' MEETING HELD AT THE REGISTERED OFFICE OF THE
COMPANY ON _____ AT 16H00.

ATTENDANCE REGISTER

.....
M BOTHA

.....
A SMITH

COMPANY NAME
MEETING OF THE SHAREHOLDERS DATED
Page 2

As Ordinary Resolution no. 1

REASON:
EFFECT:

% VOTING	IN FAVOUR OF	AGAINST	ABSTAIN
-----------------	---------------------	----------------	----------------

There being no further business, the meeting terminated.

Signed as a correct record of the proceedings:

.....
CHAIRPERSON

.....
DATE

SHIRLJEN TRADING PROPRIETARY LIMITED
REGISTRATION NUMBER 2000/012345/07

MINUTES OF A SHAREHOLDERS MEETING HELD AT THE REGISTERED OFFICE OF
THE COMPANY ON AT 15H00

ATTENDANCE REGISTER

.....
M BOTHA

.....
B GREY

.....
For: Slip Knot Investments 70 Proprietary Limited

SHIRLJEN TRADING PROPRIETARY LIMITED
REGISTRATION NUMBER 2000/012345/07

NOTICE TO MEMBERS – GENERAL MEETING

NOTICE IS HEREBY GIVEN THAT A SHAREHOLDERS MEETING WILL BE HELD AT THE REGISTERED OFFICE OF THE COMPANY ON AT 15H00

For the purpose of considering and if thought fit, of passing, with or without modification, the following resolutions as Special and Ordinary resolutions:

A G E N D A

As Special Resolution no 1:
Change of Name

THAT the Company change its name from :

SHIRLJEN TRADING PROPRIETARY LIMITED TO
MY TEST COMPANY PROPRIETARY LIMITED

And that the Memorandum of Incorporation be amended accordingly.

REASON:

EFFECT:

As Ordinary Resolution no 1

REASON:

EFFECT:

A member entitled to attend and vote at the meeting is entitled to appoint a proxy or proxies to attend, speak and vote in his stead. The proxy need not be a member of the company. Proxy forms should be forwarded to reach the offices of the company as stated below by no later than _____(as dictated by MOI) before the time appointed for the holding of the meeting. Proxy forms attached.

BY ORDER OF THE BOARD

DIRECTOR/COMPANY SECRETARY

DATE (MUST BE DATED AT LEAST A MINIMUM OF 15 – 20 DAYS PRIOR TO THE HOLDING OF THE MEETING (SEE ACT RE: NOTICE PERIOD REQUIRED FOR DIFFERENT ENTITIES))

COMPANY'S PHYSICAL REGISTERED ADDRESS; POSTAL ADDRESS; EMAIL, TEL, FAX ETC.

WAIVER OF PERIOD OF NOTICE

**SHIRLJEN TRADING PROPRIETARY LIMITED
REGISTRATION NUMBER 2000/012345/07**

**SHAREHOLDERS MEETING TO BE HELD AT THE REGISTERED OFFICE OF
THE COMPANY ON AT 15H00**

We, being **ALL** of the shareholders of the above Company entitled to attend and vote at the above meeting of the Company for the purpose of considering and if thought fit, of passing, with or without modification, the special resolution proposing the change of name of the Company hereby waive our rights to receive business days' notice (check MOI and Act) of the meeting.

NAME OF SHAREHOLDER

SIGNATURE

DATE

**NAME OF ENTITY:
REGISTRATION NUMBER:**

WRITTEN RESOLUTIONS OF THE SHAREHOLDERS DATED 30 JUNE 2011

The following Special Resolutions, as proposed by the Directors and Ordinary Resolutions were passed unanimously:-

SPECIAL RESOLUTION 1
CONVERSION OF ORDINARY SHARES OF R1.00 EACH TO SHARES OF NO PAR VALUE

RESOLVED

"That in terms of Article no. (insert relevant number) of the Articles of Association of the Company/MOI (Memorandum of Incorporation) and in accordance with Schedule 5, item 6 of the Companies Act, 2008 and Regulation 31 of the Companies Regulation; The 1000 ORDINARY SHARES of **R1.00 (ONE RAND PAR VALUE)** each in the Authorised share capital of the Company (all of which are in issue) be **CONVERTED** into 1000 ORDINARY SHARES of **NO PAR VALUE.**"

SPECIAL RESOLUTION NO 2
INCREASE OF AUTHORISED SHARE CAPITAL

RESOLVED

"That subject to the passing of special resolution no. 1 above and Article no. 29(a) (insert relevant number) of the Articles of Association/MOI the Authorised share capital of the Company comprising of 1 000 ORDINARY shares of NO PAR VALUE be **INCREASED** by the creation of a further 75 ORDINARY shares of NO PAR VALUE; each new share so created shall rank pari passu in all respects with the existing ORDINARY shares of NO PAR VALUE."

The reason for and the effect of the passing of special resolutions no. 1 and 2 above are detailed in the Directors' report prepared in terms of REGULATION 31 (6) AND (7) OF THE COMPANIES REGULATIONS 2011, as published by the directors.

AFTER THE PASSING OF THE ABOVE SPECIAL RESOLUTIONS, THE COMPANY'S AUTHORISED SHARE CAPITAL WILL BE REFLECTED AS FOLLOWS:-

AUTHORISED SHARE CAPITAL

1075 ORDINARY shares of No par Value
1 Convertible redeemable preference share of R1

COMPANY NAME
WRITTEN RESOLUTIONS OF THE DIRECTORS DATED

Page 2

ORDINARY RESOLUTION NO. 2
ALLOTMENT OF SHARES:

RESOLVED

"That in terms of a general authority granted to the directors by the shareholders, the following shares be allotted and issued with immediate effect :-

AFTER THE PASSING OF THE ABOVE SPECIAL AND ORDINARY RESOLUTIONS, THE COMPANY'S SHARE CAPITAL WILL BE REFLECTED AS FOLLOWS:-

AUTHORISED SHARE CAPITAL	ISSUED SHARE CAPITAL
1075 ORDINARY shares of No par Value 1 Convertible redeemable preference share of R1	1075 ORDINARY shares of No par Value

ORDINARY RESOLUTION NUMBER 3
FURTHER RESOLVED THAT

Any one of the directors of the Company be hereby authorised and empowered to sign all documentation, for and on behalf of the Company, to effect the abovementioned ordinary resolutions.

.....
Date

.....
Date

.....
Date

.....
Date

.....
Date

STANDARD TEMPLATE FOR AGM'S

EXAMPLE COMPANY PROPRIETARY LIMITED
"The Company"
REGISTRATION NO: 2014/12345/07

MINUTES OF THE ANNUAL GENERAL MEETING OF THE COMPANY IN TERMS OF SECTION 61 OF THE COMPANIES ACT, 2008 FOR THE FINANCIAL YEAR ENDED {E.g., 30 JUNE 2014} HELD AT THE REGISTERED OFFICE OF THE COMPANY AT 9:00 AM ON {DATE OF DIRECTORS SIGNATURE ON DIRECTORS REPORT}

PRESENT: All members entitled to attend and vote either in person or by proxy, namely:-

CHAIRPERSON: {Initial and Surname} was elected the Chairperson. As the required quorum were present, the meeting was declared duly constituted.

WAIVER OF NOTICE: **IT WAS NOTED** that the statutory 10 (ten) days' notice period required for the holding of the meeting in terms of Section 62 (1)(b) of the Companies Act, was waived by all of the members.

ORDINARY RESOLUTIONS:

ANNUAL FINANCIAL STATEMENTS: The annual financial statements, for the financial year ended {e.g., 30 June 2014}, including the auditors' report and directors' report was presented to the members.

APPROVAL OF ACTS OF DIRECTORS: **IT WAS RESOLVED THAT:** All matters and actions undertaken and discharged by the directors on behalf of the Company be and are hereby confirmed.

ELECTION OF DIRECTORS: **IT WAS RESOLVED THAT:** The undermentioned directors, who are retiring by rotation and who have consented to their re-appointment, be re-elected as directors of the Company for the ensuing year (**NOTE** Minimum of 50% of the board should be elected by the shareholders):-

{Initial and Surname, each director to be dealt with separately}

AUDITORS REMUNERATION: **IT WAS NOTED THAT:** The remuneration of the auditors for the ensuing financial year be determined by the directors/audit committee.

AUDITORS INDEPENDENCE AND RE-APPOINTMENT: **IT WAS NOTED THAT:** The directors/audit committee have confirmed the independence of the auditors.

COMPANY NAME
MINUTES OF THE ANNUAL GENERAL MEETING DATED

Page 2

IT WAS RESOLVED THAT: On the recommendation of the directors/audit committee, {Name of Auditor} be re-appointed as the auditors of the Company for the ensuing financial year, notwithstanding the fact that the secretarial and/or accounting work of the Company may be carried out by the principals or staff of the auditing firm, who would otherwise, without the consent here given, be qualified for the appointment as the auditors of the Company.

SPECIAL RESOLUTIONS:

**DIRECTORS’
EMOLUMENTS:**

IT WAS NOTED THAT there were no director’s emoluments paid or allocated for the year.

OR:

IT WAS RESOLVED, BY SPECIAL RESOLUTION, that the payment of the undermentioned directors’ emoluments be approved and confirmed:-

{Initial and Surname and amounts}

**DIRECTORS’ AUTHORITY
TO ALLOT SHARES:**

IT WAS RESOLVED THAT the directors be and they are hereby generally and unconditionally authorised to exercise any power of the Company to allot and grant rights to subscribe for unissued shares in the capital of the Company for the ensuing financial year.

**DIRECTORS’ AUTHORITY
TO REPURCHASE
SHARES:**

IT WAS RESOLVED THAT the directors be and they are hereby generally and unconditionally authorised to exercise any power of the Company to repurchase any of the issued shares in the capital of the Company for the ensuing financial year.

**DIRECTORS’ AUTHORITY
TO APPROVE LOANS:**

IT WAS RESOLVED THAT the directors be and they are hereby generally and unconditionally authorised to exercise any power of the Company to approve loans made by the Company for the ensuing financial year, provided that the directors have undertaken a solvency and liquidity test as is required by the Companies Act 2008.

The undermentioned loans were made by the Company for the financial year :-

To/From {Name of company} {R Amount}

CLOSURE: There being no further business, the meeting was closed.

READ AND APPROVED AS A TRUE RECORD OF THE PROCEEDINGS.

CHAIRPERSON

EXAMPLE COMPANY PROPRIETARY LIMITED
"The Company"
REGISTRATION NO: 2014/12345/07

MINUTES OF THE ANNUAL GENERAL MEETING OF THE COMPANY IN TERMS OF SECTION 61 OF THE COMPANIES ACT, 2008 FOR THE FINANCIAL YEAR ENDED {E.g., 30 JUNE 2014} HELD AT THE REGISTERED OFFICE OF THE COMPANY AT 9:00 AM ON {DATE OF DIRECTORS SIGNATURE ON DIRECTORS REPORT}

ATTENDANCE REGISTER

SIGNATURE

NAME OF SHAREHOLDER

NO. OF SHARES HELD

DATE

SIGNATURE

NAME OF SHAREHOLDER

NO. OF SHARES HELD

DATE

SIGNATURE

NAME OF SHAREHOLDER

NO. OF SHARES HELD

DATE

STANDARD TEMPLATE FORM OF PROXY

EXAMPLE COMPANY PROPRIETARY LIMITED
“the Company”
REGISTRATION NO: 2014/123456/07

FORM OF PROXY

I, we {Name of Shareholder}
Of {address of Shareholder}

Being a member of the above Company hereby appoint {name of person representing the shareholder}

.....of or failing him/her

orof or failing him/her

or.....of or failing him/her

the Chairperson of the meeting as my/our proxy to vote for me/us and on my/our behalf at the annual general meeting of the Company to be held at {Date on which the directors signed the financials}, DATE and TIME and at any adjournment thereof as follows :-

In favour of Against Abstain

Ordinary resolution no. 1
Presentation of the Annual Financial Statements

Ordinary resolution no. 2
Approval of acts of directors.

Ordinary resolution no. 3
Approval of the re-election of the following Directors:-

Ordinary resolution no. 4
Approval of auditors remuneration and re-appointment of auditors.

Special resolution no. 1
Approval of directors emoluments

Special resolution no. 2
Granting directors the authority to allot unissued shares

Special resolution no. 3
Granting directors the authority to repurchase the Company's issued shares

COMPANY NAME
ANNUAL GENERAL MEETING PROXY FORM DATED
Page 2

Special resolution no. 4
Granting directors the authority to
approve loans made by the Company

(Indicate instruction to proxy by way of a cross in space provided above). Unless otherwise instructed, my proxy may vote as he thinks fit.)

Signed at _____ this _____ day of _____

.....
Signature

.....
Name of Shareholder

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead. The proxy need not be a member of the Company. Proxy forms to be delivered to the Company's registered office address prior to the holding of the meeting.)

STANDARD TEMPLATE WRITTEN RESOLUTIONS OF DIRECTORS

EXAMPLE COMPANY PROPRIETARY LIMITED
"the Company"
REGISTRATION NO: 2014/123456/07

WRITTEN RESOLUTIONS OF THE DIRECTORS PASSED ON (DATE OF SIGNATURE OF DIRECTORS REPORT)

IT WAS RESOLVED THAT:-

The annual financial statements, including the auditor's report, for the financial year ended {e.g., 30 June 2014} be approved and presented to the shareholders at the AGM.

IT WAS FURTHER RESOLVED THAT:-

Any two directors of the Company be hereby authorised and empowered to sign the abovementioned annual financial statements on behalf of the Board.

NAME OF DIRECTOR

DATE

NAME OF DIRECTOR

DATE

NAME OF DIRECTOR

DATE

NAME OF DIRECTOR

DATE

MEETING MANAGEMENT PROCESS ON A PRACTICAL NOTE

The table below illustrates how to set timelines in terms of a meeting management process to ensure a disciplined and effective board/committee.

Note: all due dates are measured as the specified number of business days from the date of the meeting ("T-0")

BUSINESS DAY'S	ITEM
T-20	- Confirm meeting date - Circulate draft agenda and schedule of matters arising from previous meeting - Circulate request for directors' disclosure document
T-16	Confirm and circulate final agenda
T-15	Request submissions for the meeting pack
T-8	Compile the meeting pack
T-7	Circulate the electronic meeting pack
T-0	Day of the meeting - Obtain signed minutes of previous meeting and paste into minute book or retain electronically. - Obtain a signed attendance register - Present the register of directors' disclosures
T+2	Circulate informal matters arising
T+10	Circulate draft minutes and formal matters arising to the executives for comment
T+15	Send draft minutes to the Chair for comment
T+20	Circulate the draft minutes to the governing body/ committee members for comment
T+30	Minutes to be finalised and closed for input

SECTION 5

SHARE CAPITAL (PART D Sections 36 and 37 AND PART E OF CHAPTER 2)

Definition of a shareholder

Section 1 - The holder of a share issued by a company who is entered as such in the certificated/uncertificated securities register as the case may be.

Section 57(1) - A person who is entitled to exercise any voting rights in relation to the company irrespective of the form, title or nature of the securities to which those voting rights are attached.

For the purposes of the governance provisions of the New Act, "shareholder" means either the registered holder of a share or the person entitled to exercise any voting rights in relation to the company (i.e., the beneficial owner).

Shareholders of pre-existing entities rights are reserved.

NEW ACT

- protects shareholders rights (Section 39)
- advances shareholder activism
- provides enhanced protections of minority shareholders and other Stakeholders (such as bankers, creditors and Trade Unions representing employees etc)

MAINTENANCE OF CAPITAL RULE V.S. SOLVENCY AND LIQUIDITY TEST

The maintenance of capital rule (as per the Old Act), which protected creditors has been scrapped and replaced by the requirement for a solvency and liquidity test to be undertaken by the directors in the following circumstances:-

- financial assistance for the acquisition by a company of its own shares (from third parties, including, share employee schemes, a subsidiary in its holding company) (Financial assistance for securities – Section 44)
- loans or financial assistance to directors or related or inter-related entities (Section 45) including subsidiaries; fellow subsidiaries; holding companies; directors and related persons.
- distributions of any nature, including payments of dividends (i.e., where value moves away from a company to its shareholders) (Section 46)
- offer of a cash payment in lieu of awarding a capitalisation share (Section 47)

Commented [S10]: Section 45: Holding companies will no longer be required to comply with the requirements of section 45 where financial assistance is provided to subsidiaries.

MAINTENANCE OF CAPITAL RULE V.S. SOLVENCY AND LIQUIDITY TEST (cont/d)

- share buy-backs
- amalgamations or mergers (two of the fundamental transactions)
- transfer of a foreign company's registration to RSA, i.e., becoming a domesticated or local entity.
- redemption of preference shares.

NB: Failure to undertake the solvency and liquidity test in the abovementioned circumstances imposes a greater burden on the directors of a company to ensure that procedures are followed in the correct manner as prescribed by the Act otherwise this could result in them being held jointly and severally liable for the costs sustained by the company.

It is recommended that if a company is contemplating any business venture, including the entering into of contracts etc which may mean the investing of monies or incurring of costs, that the directors undertake a solvency and liquidity test so as to err on the side of caution.

Solvency and Liquidity Test (an accounting exercise):

Solvency: the assets of the company fairly valued, equal or exceed its liabilities (i.e., examination of the balance sheet)

Liquidity: the company will be able to pay its debts as they become due, in the ordinary course of business for a period of 12 months, after the date of the test or 12 months after a distribution to shareholders (i.e., examination of the cash flow statement)

Note:

- In a group structure, the solvency and liquidity test is applicable to the individual company and not the whole group.
- Contingent assets and liabilities are also to be taken into account.
- If the above test is applicable to a transaction that a company is part of and which fails to comply with, the agreement is still enforceable, however the directors will be held personally (jointly and severally) liable for any recourse affected parties may have. The affected parties have Court recourse to suspend or reverse the transaction.

MINORITY SHAREHOLDERS

In addition to the solvency and liquidity test requirement (as detailed above), the interests of minority shareholders are protected by the requirement for shareholder approval of:-

- share and option issues to directors and other specified persons;
- financial assistance for share purchases;
- financial assistance to a director or related person.

SHAREHOLDERS AND OTHER STAKEHOLDERS

A) Remedies introduced:

- may apply to court to have a director declared delinquent or placed under probation.
- may lodge complaints with the CIPC or Companies Tribunal.
- may apply for protection from regime set up for “whistle blowers” (Section 159) Additional Trade Union Remedies to A) above –
- may restrain the company from doing anything inconsistent with the New Act or its MOI
- is entitled to receive a copy of written notice if the board adopts a resolution to provide direct/indirect financial assistance to a director. (If loan exceeds 1/10 of 1% of the company’s net worth.)
- may gain access to the company’s financial statements, via the CIPC or Companies Tribunal, for the purposes of initiating business rescue.

Additional Shareholder Remedies (Section 164) to A) above -

- may apply to court for a declaratory order as to the shareholders rights and to obtain a remedy
- may apply to court for relief from abuse of a company’s separate legal personality
- may upon delivery to the company of a notice of objection, have their shares valued and bought back by the company for cash (known as an appraisal remedy, instituted in circumstances where the company’s majority shareholders pass a special resolution taking certain actions which result in fundamental change/s to the company’s business including entering into a fundamental transaction or change of the rights attaching to the minority shareholders shares (i.e. altering their rights which will result in them being materially disadvantaged).
- may under certain circumstances commence or pursue legal action against anyone in the name of the company (i.e., a derivative action, meaning any shareholder, director, prescribed officer or employee representative such as a trade union may initiate or compel

a company to initiate a derivative action against anyone who has harmed or may harm the company's legal interest)

- may institute a minority oppression action (as retained from the Old Act)
- may institute a Class action

SHAREHOLDER AGREEMENTS (Section 15(7))

With reference to notes on the above contained under the heading transitional arrangements in Section 3 of the course file

- Prior to the New Act, shareholders agreements entered into usually contained a clause stating that any matter as contained in the shareholders agreement which is in conflict with any provisions of the Memorandum and Articles of Association, the shareholders agreement will prevail.
- In terms of Section 15(7) of the New Act, such provisions are overridden. Therefore, all addendums or new shareholders agreements entered into after 1 May 2011, must be consistent with the New Act and the MOI, otherwise it will be void or unenforceable to the extent of the inconsistency.

In addition, any amendment or alteration made to existing shareholders agreements after 1 May 2011 will also require incorporation into the MOI.

The new Act allowed a 2-year grace period until 1 May 2013 in which companies were able to adopt a new MOI at no cost. The New Act now takes precedence.

Note: Reminder shareholders agreements are private documents, whilst a MOI is a public document.

Transitional arrangement

- Shareholders agreements entered into prior to the New Act continue to have the same force and effect for :-
- 2 years, i.e., until 1 May 2013, until changed by the shareholders who are party to the agreement.
- after a 2-year period, to the extent that the agreement is consistent with the Act and MOI.

AUTHORISED SHARE CAPITAL (i.e., the maximum number of shares a company may issue)

As per the New Act and unless the MOI provides otherwise:-

- MOI to disclose classes of shares; number of shares of each class and value of each class that the company is authorised to issue. Each class of shares must have a distinguished designation and have rights; preferences; limitations and other terms associated with that class.
- unclassified or blank shares can be authorised. Board must classify title and rights of those "unclassified or blank shares" **prior** to allotting/issuing.
- directors may increase; cancel (**not decrease as stated in the Act**) or reclassify any class of authorised share capital.
- issue shares of any class that has one general voting right, except to the extent provided otherwise by the Act or rights assigned thereto in the MOI.

Note:

In the Old Act, the directors required shareholder approval via special resolution prior to making any of the abovementioned changes to the Authorised share capital of a company.

In the New Act, the directors may attend to the abovementioned changes, without shareholder approval via special resolution. It is recommended that if considering adopting a new MOI, that this matter (which is an alterable provision) be given careful consideration.

Classes of Shares

Shares are divided into classes according to the specific rights a share confers on its holder. The rights that differ among the various classes can usually be divided into the following:

The four absolute rights of shareholders consist of both financial and non-financial rights:

- 1 The right to vote
- 2 The right to information
- 3 The right to share profits that have been declared and divided
- 4 Right to share in the net surplus capital of a company on its winding-up.

PREFERENCE SHARES

Class of shares whose holders enjoy preference over any other class of shares with regard to the payments of dividends and sometimes return on capital on a winding-up. Usually only enjoy a modest income return and enjoy voting rights. The rights conferred on preference shares are presently dependent on the Memorandum of Incorporation.

A company cannot have preference shares unless it has ordinary shares/other class. Preferential shareholders become entitled to a payment only when a company has made a profit and declared dividends.

Cumulative Preference Shares

If a dividend is not declared during a specific year, the shareholders right to a dividend is carried over to the next year. When a dividend is declared the next year, the preference shareholder will have to be paid two years dividends before the ordinary shareholders can receive their dividends.

Participating Preference Shares

After receiving their preference dividends, preference shareholders may be given the right to also receive normal dividends along with the ordinary shareholders or just after the ordinary shareholders.

Preferential right to Capital on Winding-up

Preferential shareholders can be given the preferential right to receive payment of the capital they contributed to the company on its winding-up. In addition, they can be given the right to share in any surplus assets of the company upon its winding-up after receiving their capital contributions, but this is the exception rather than rule.

Convertible preference shares

The right to convert the preference shares to shares of another class after certain date is attached to the preference shares.

ORDINARY SHARES

Usually receive dividends after the preference shareholders also usually have the right to receive any of the company's surplus assets after it has been wound up. Ordinary shareholders normally have the right to vote at meetings of shareholders, this right may be curtailed in 2008 Act so that one class of ordinary share will not have the right to vote on resolutions to amend the preferences, rights, limitations and other terms of issue of their shares. There must be at least one class of shares that carry the right to vote.

DEFERRED SHARES

Occasionally shares are issued to the founders of a company that entitle them to dividends, only if the dividend amount exceeds a certain threshold and after the ordinary shareholders have been paid. Last in line to receive dividends.

Issues of Shares

The issue of shares is a management decision, unless specifically limited in the Memorandum of Incorporation. The Board of Directors will have authority to take the decision to issue shares without shareholders' approval. The Board of Directors also have the authority to increase the authorised shares of a company.

However, in the following circumstances, a resolution by the Board of Directors to issue shares must be approved by way of a special resolution of the shareholders:

- Where shares are issued to directors, future directors or prescribed officers of the company;
- Where shares are issued to a person related or interrelated to the company, a director or prescribed officer of the company (a natural person's or sister, aunt or cousin. A natural person is related to a company when he directly or indirectly ultimately owns 5% and more of a company or exercises effective control;
- A juristic person related to another juristic person if it directly or indirectly controls the other by either having the majority of voting rights or by having the right to appoint the majority directors of the company, or if it is a subsidiary of the company or if it controls the business of the company;
- Where shares are issued to a nominee of a director/prescribed officer of the company;
- Where the voting power of the shares to be issued will exceed 30 percent of the voting power of the shares of that class held immediately before the issue;

Right of Pre-emption:

As a general rule, shareholders of private companies have a right of pre-emption to new shares issued by the company. This means that when the company issues new shares, these must be offered to existing shareholders first, pro rata to their current shareholdings.

This provision is to guard against the dilution of ownership in private companies.

Debentures

Debenture is an acknowledgement by a company that it owes the debenture holder a certain sum of money, as evidenced in the document. Debenture holders are creditors of the company by virtue of having extended loans to the company.

The duties of the company towards the debenture holders can be secured or unsecured. A trustee will usually be appointed to hold security on the debenture holder's behalf. If the company defaults on its commitments to the debenture holders, the trustee will be able to enforce the security on their behalf, without the need for every debenture holder to institute action individually.

The board of directors can decide whether to issue debentures without the approval of the shareholders, unless otherwise indicated in the Memorandum of Incorporation.

PAR VALUE SHARES (Section 35) and Schedule 5, Item 6 and Regulation 31 (PART D, Section 31)

The New Act, under transitional provisions, allows for the continued existence of par value shares, and for regulations to govern the transition of such shares to the new regime.

Note: Provisions do not apply to banks in terms of the Banks Act 1993, until a date declared by the Minister.

Regulations:-

- No compulsory conversion of any class of par value shares already in issue is required. Existing companies may hold par value shares indefinitely. (According to the new Act, this should be disclosed on the company's annual return filed with CIPC (refer to Section 8 of the course file, until such time as the company no longer has such issued par value shares. Currently there is no such requirement on the actual electronic submission of the annual return).
- Further par value shares of any class, may still be allotted or issued **provided there is still sufficient authorised share capital of that class available**. These shares may still be issued at a premium (i.e., an amount paid for a share over and above the par value of the share.)
- Existing companies with authorised share capital of par value may not w.e.f. 1 May 2011 increase, nor sub-divide the number of their authorised/issued share capital of par value. According to CIPC "The New Act only provides for no par value shares. Existing par value shares cannot be subdivided as a subdivision constitutes an increase in the number of par value shares." However, companies having shares of no par value may subdivide or consolidate their no par value shares determined on the initial subscription price of these no par value shares.

Circumstances for conversion:-

- A) Entities which have Authorised share capital of par value of a particular class, none of which are in issue, or where the shares were originally issued and subsequently bought back (or redeemed in the case of pref. shares) by the company, this entity must first, if wanting to issue this particular class of shares, convert these shares into shares of no par value;
- B) Entities which voluntarily wish to convert their par value shares in the Authorised share capital of the company (some of which may be in issue) into no par value shares;
- C) Entities which are required to increase their authorised share capital (i.e., to enable the company to allot/issue additional shares as a result of there being no further available shares in the authorised share capital of the company, i.e., the company has issued all of its authorised share capital.).

PAR VALUE SHARES (Section 35) and Schedule 5(6) (cont/d)

Procedures to be followed :-

- A special resolution (if a proviso of the MOI) (Form CoR 15.2) is required to be filed with CIPC (refer to Section 4 of the course file) accompanied by a copy of the minutes of the meeting of the shareholders of the affected class of shares (in the event that only one specific class of shares is to be converted into no par value shares) accompanied by a copy of the minutes of the meeting of all of the shareholders, together with copies of a notice/s or shortened notice/s or waiver of notice/s (optional),
- A Form CoR 31 (notice of board resolution to convert par value shares) and a copy of the Board resolution to this effect (if MOI dictates that only directors' approval is required)
- Board Report (in terms of Regulation 31(6) and (7) of the Companies Regulations 2011 (see attached example) is to accompany the Form CoR 31 if any of the classes of shares to be converted are already in issue. A copy of this report is to be sent to SARS.

PAR VALUE SHARES (Section 35) and Schedule 5(6) (cont/d)

IN TERMS OF OLD ACT:

A subscriber to the new issue/allotment pays R1 000 for 100 ordinary shares of a par value of R1 each

Price paid for the shares	1 000,00
Less: par value of the shares 100 shares of R1 each	100,00

SHARE PREMIUM	R 900,00
	=====

Therefore, the premium per share calculated as 900 divided by 100 = R9 per share.

IN TERMS OF NEW ACT:

A subscriber to the new issue/allotment pays R1 000 for 100 ordinary shares of no par value

Price paid for the shares R1 000,00

Price per share: R1 000 divided by R100 = R10 per share.

No Share premium only total consideration value.

TO BE PREPARED ON COMPANY'S
LETTERHEAD TO THE SHAREHOLDERS
OF

EXAMPLE COMPANY (PROPRIETARY)
LIMITED REGISTRATION NUMBER:
2014/123456/07 INCOME TAX REF NO:
932841881

DIRECTORS REPORT REQUIRED IN TERMS OF REGULATION 31 (6) AND (7) OF THE COMPANIES REGULATIONS 2011 RELATING TO THE PROPOSAL TO CONVERT PAR VALUE SHARES TO NO PAR VALUE SHARES.

- a) State all information that may affect the value of the securities affected by the proposed conversion.
- b) Identify the class of holders of the Company's securities affected by the proposed conversion.
- c) Describe the material effects that the proposed conversion will have on the rights of the holders of the Company's securities affected by the proposed conversion.
- d) Evaluate any material adverse effects of the proposed arrangement against the compensation that any of those persons will receive in terms of the arrangement.

{INITIAL AND SURNAME}

DATE

{INITIAL AND SURNAME}

DATE

{INITIAL AND SURNAME}

DATE

SHARE ALLOTMENTS/ISSUES IN PRIVATE ENTITIES (PART D Section 38 and 41)

When additional capital is introduced into the company, a further allotment or issue of shares is required.

In term of the New Act, shares can be issued :-

- without having been fully paid for;
- issued in the form of an agreement for future services, future benefits, or future payments by the subscribing party;
- in trust and transferred only in the manner as set out in the trust agreement (this is usually used for “treasury shares” in the case of a company with a share incentive scheme or future options for directors);
- in the case of a private company, each existing shareholder has a pre-emptive right, prior to any outsider, to be offered a percentage of the shares equal to the voting power held (Section 39). The shareholders can decide to either waiver this right or take up a lesser number of shares. MOI may alter this default provision;
- by the directors without the consent of the shareholders unless such authority is limited in the company's MOI.

PROCEDURE TO BE FOLLOWED WHEN ALLOTING OR ISSUING SHARES IN TERMS OF THE NEW ACT

- Recommended that a share subscription agreement be entered into (the terms and conditions of which are to be in line with the company's MOI and the New Act, if not, the MOI must be amended accordingly). Dependent on whether directors or shareholders' approval is required, a resolution of the directors or shareholders authorising the entering into of the subscription agreement and approving the allotment/issue of shares is required.
- Enquire whether the company has sufficient authorised share capital available, if not enquire whether the MOI (or existing Memorandum and Articles of Association) requires directors or shareholders authority (via special resolution Section 4 of the course file) to increase the authorised share capital. NB: Section 38(2) allows for the increase in authorised shares to be retroactively authorised within 60 business days of shares being issued.
- Issue share certificates (private company's share certificates to be endorsed "transfer of shares is restricted") Section 51(1)(a)(iv). Failing to do so does not however invalidate the share certificate, however, in terms of good corporate governance practice it is advisable that this requirement be complied with.
- Share register to be updated.

NB: Section 41(2) Approval of allotment by **ordinary board resolution** is required if the allotment or issue is :-

- under an agreement underwriting the shares, securities or rights;
- in the exercise of a statutory or MOI pre-emptive right to be offered and to subscribe for shares;
- in proportion to existing holdings, and on the same terms and conditions as have been offered to all of the shareholders of the company or to all the shareholders of the class or classes of shares being issued;
- pursuant to an employee share scheme;
- pursuant to an offer to the public (in public entities only).

If the issue of shares is not authorised by the board (should board approval suffice) prior to the actual issue, the transaction may be ratified within 60 business days of the date of the issue. Non-ratification – transaction is deemed to be null and void. Shareholders to be refunded consideration paid for the shares plus interest.

NB: Section 41 (3) and (4) Approval of shareholders, via **special resolution** is required:-

- if after the issue of the shares, the “aggregate” voting power of the class of the shares that are to be issued will be equal to or exceed 30% of the “aggregate” voting power of all the shares of that class held by shareholders immediately before the transaction or series of transactions; and
- If issued to present or future directors or officers;
- If issued to a person related or inter-related to the company, or to a director or prescribed officer of a company or a nominee.

NB; IF SHARES TO BE ISSUED OR ALLOTTED COMPRISE SHARES OF PAR VALUE EACH, REFER TO NOTES ON PAR VALUE SHARES

KINDLY NOTE THAT NO CoR FORM REQUIRES FILING WITH CIPC ADVISING OF THE ALLOTMENT/ISSUE OF SHARES. (Old Act Form CM 15)

NB: Beneficial ownership changes to be reported to CC / Updated register required.

NB: Stamp duty on the allotment or issue of marketable securities (including shares) payable to SARS was repealed w.e.f. 1 January 2006. Any allotment prior to this date required the payment of allotment duty calculated at R0,0025 cents per every R10 or part thereof on the total consideration paid for the shares only (i.e., including premium). If not paid within 21 days of the allotment, penalties of a maximum of R4 000 was payable on each share certificate issued. This still applies for any allotments or issues that occurred prior to 1 January 2006. (refer to information on payment of STT at the back of this section).

NB: TRP approval may be required

This should not be regarded as legal advice.

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DECLARATION OF TRUST

This serves to place on record that 90 (ninety) ordinary shares in

(PROPRIETARY) LIMITED

of the nominal value of R1,00 (par/no par value) each registered in the name of the undersigned, namely:

and in respect of which Certificate number has been issued, is

the property of: YYYYYYYYYYYYYYYYYYYY

(hereinafter called "The Owner") and is held by me on behalf of the Owner who is entitled to all dividends thereon and all other sums of money payable in respect thereof and all rights and privileges attaching thereto.

I hereby irrevocably nominate, constitute and appoint any Director or the Owner for me and on my behalf to transfer the said shares into such name as the Owner may think fit, and for that purpose to sign and execute on my behalf any transfer form and to do any act necessary to transfer the shares.

I bind myself and undertake at the request of the Owner to execute in favour of the Owner or in favour of any person or persons nominated by it a proxy or Power of Attorney to vote at any General Meeting of the Company.

DATED AT JOHANNESBURG ON THIS THE DAY OF 2013

AS WITNESSES

TRANSFER OF SHARES IN A PRIVATE ENTITY (PART E - Sections 49 – 56) inclusive

When shares are sold, a transfer of shares is required.

In terms of the New Act (and the Old Act), transfer of shares in a private company is restricted (i.e., shares must be offered to existing shareholders, prior to being offered to an outside party, upon the agreement of the existing shareholders). If existing shareholders do not wish to purchase the shares and do not agree to the sale of the shares to an outside party, the shares can be “bought back” by the company, provided that the company meets the requirements of the solvency and liquidity test.

PROCEDURE TO BE FOLLOWED WHEN TRANSFERRING SHARES

- Recommended that a sale/purchase of shares agreement be entered into (the terms and conditions of which are to be in line with the company’s MOI and New Act, if not, MOI to be amended accordingly);
- a resolution of the directors authorising the entering into the sale/purchase of shares agreement and approving the transfer of shares is required;
- Share transfer deed to be prepared (preferable but not obligatory) (preferably requiring both the seller’s and purchaser’s signatures). It is recommended that an example of the share transfer deed or a template to be utilised be included in the MOI as the company’s recognised instrument of transfer. (Note that the signed sale/purchase of shares agreement is also sufficient evidence of the transfer of shares, provided this is so stated in the MOI.);
- Share certificate in the name of the seller to be cancelled and share certificate in the name of the purchaser to be prepared;
- Transfer of shares with an effective date of 1 July 2008 onwards requires STT to be paid to SARS via e-filing. Securities Transfer Tax (STT) is calculated at R0,0025 for every R10 or part thereof, on the consideration paid for the shares, and is to be paid by the end of the 2nd month after the effective date of the transfer, otherwise a 10% penalty and 15% daily interest is incurred. Refer to notes contained in the back of this section in this regard, alternatively revert to SARS website to assist with calculations.
- If original share certificate pertaining to the transfer has been lost or misplaced, an indemnity and replacement share certificate is to be prepared prior to attending the transfer. (refer to Section 9 of the course file – Reconstruction of Records).
- Share register to be updated, only once STT has been paid.

PROCEDURE TO BE FOLLOWED WHEN TRANSFERRING SHARES (cont'd)

STT is payable:-

- on the consideration paid for the shares only (i.e., excludes consideration for loan accounts; goodwill etc).
- If the effective date of any transfer fell between the periods prior 1 January 2005 and up to and including 30 June 2008, share transfer duty was calculated at the same rate, however it required payment within a period of 6 months from the effective date of transfer. No interest was payable if the STT was not paid timeously, however penalties were payable and differ during these time periods. Please refer to SARS website to determine STT and penalties payable. In these instances, SARS will not accept electronic payments. A bank cheque (valid for at least 2 weeks) or a bank guaranteed cheque is required. The cheque and signed share transfer deeds will need to be presented at a main SARS branch (i.e., Randburg) which has a cash office for payment.

STT is exempt :-

- when shares are transferred from a nominee to the actual beneficial owner (or another nominee as designated by the actual beneficial owner). To be depicted on actual share transfer deed "No STT duty payable, transfer from nominee to beneficial owner" or "No STT payable transfer from nominee to nominee." A Declaration of trust is required. The exemption does not apply when the nominee is instructed to transfer the shares to anyone else other than the beneficial owner.
- when shares are transferred from a deceased estate. In this instance the executor will be required to sign the share transfer deed. Duties paid via winding up of the Estate, i.e., included in Estate Duty.
- in terms of the STT Act, including internal group restructure arrangements. In these instances, SARS are to be provided with the particulars in order to determine whether the transaction is deemed to be STT exempt in terms of Section 47 of the Income Tax Act. (NB Please refer to Section 47 of the Income Tax Act prior to contemplating an internal group restructure). SARS ruling to be filed together with the share transfer deed and cancelled share certificate.
- if transaction value is less than R40 000 (i.e., R100 STT).

Additional information:-

- where shares are held by an entity, either a close corporation; company; trust etc, a representative of the entity (i.e., a member; director; trustee) will require authorisation to enter into the sale/purchase of shares or subscription agreement and to sign the relevant documentation pertaining thereto for and on behalf of the entity.
- if the consideration of the shares is paid on an estimation or based on a future Profit Before Income Tax etc, the STT should be paid on the value of the consideration at the effective date of the transaction, thereafter further STT payments can be made as and when they become due and payable. This will alleviate the payment of unnecessary interest and penalties.

NB: TRP approval may be required if a regulated company

NB: Beneficial ownership changes to be reported to CC / Updated register required.

NON-RESIDENT SHAREHOLDER

As a result of a share allotment

- If the shareholder is non-resident, the share certificate will require non-resident endorsement at the foreign exchange department of the company's bankers in terms of RSA exchange control regulations. In order to attend to this, the company's bankers usually require:-
- details of the transaction (i.e., preferably a copy of the subscription agreement)
- proof of receipt of the monies into the company's bank account from a foreign source.
- South Africa Reserve Bank (SARB) approval.

NB: Different banks may have different requirements.

As a result of a share transfer

- If the purchaser of the shares is non-resident, the share certificate will require non-resident endorsement at the foreign exchange department of the company's bankers in terms of RSA exchange control regulations. In order to attend to this, the company's bankers usually require :-
- details of the transaction (i.e., preferably a copy of the sale/purchase of shares agreement)
- proof of receipt of the monies into the seller's bank account.
- South Africa Reserve Bank (SARB) approval (if monies are transferred into a foreign bank account from a RSA source or if monies are transferred into a RSA bank account from a foreign source.)
- If the seller of the shares is non-resident, the share certificate will require cancellation of the non-resident endorsement at the foreign exchange department of the company's bankers in terms of RSA exchange control regulations. Above procedure to be followed.

NB: Different banks may have different requirements.

SHARES HELD IN A NOMINEE CAPACITY FOR AND ON BEHALF OF A BENEFICIAL OWNER

Registered Holder – the name in which the shares are registered.

Beneficial Interest – the right or entitlement of a person through ownership, agreement, relationship or otherwise, alone or together with another person (i.e. it is now possible for at least three unrelated persons to each have a beneficial interest, first person named deemed to have beneficial interest) to receive or participate in any distribution and to exercise or cause to be exercised in the ordinary course any or all of the rights attaching to the said shares and dispose or direct the disposal or any part of a distribution of the shares.

The abovementioned definition excludes interest held by a person in a unit trust or collective investment scheme in terms of Collective Investment Schemes Act 2002.

A Declaration of trust is required, together with a share transfer deed signed in negotiable form, which documents are to be attached to the related original share certificate and retained in safe custody.

The New Act still allows for shares and securities to be registered in the name of a person who is acting as a nominee for and on behalf of a beneficial owner. A company need only recognise the registered holder of a security as having any rights in respect to those shares/securities including the right to exercise the votes attached to that security etc. Most important – ensure that the relationship governing the registered holder and the beneficial owner is regulated. (i.e., signing of declaration of trust and share transfer deed in negotiable form).

NB In a public company, if the person shown as the registered holder of a share/security is not the actual beneficial owner of the said share/security must disclose the identity of the beneficial owner/s and the number/class of shares or securities held within 5 business days after month end every month during which a change has occurred. (Old Act required disclosure on 3 month basis).

The New Act allows for any private company to request the registered holder of the share/security, to disclose in writing whether the share held by the registered holder is held in a nominee capacity.

The holder of a beneficial interest may vote at any meeting of the shareholders only if :-

- right to vote is included on required forms;
- Name of beneficial owner appears on the register of disclosures; is in possession of a proxy from the registered holder (the beneficial owner may demand same from the registered holder).
- The registered holder is obliged to deliver a notice and forms of proxy to the beneficial owner. (See example – voluntary Form CoR 36.3 as discussed under Section 4 of the course file).

SHARES WHICH HAVE BEEN PLEDGED/CEDED AS SECURITY

A share transfer deed is to be signed in negotiable form and attached to the related original share certificate and retained in safe custody, together with a copy of the cession/pledge/resolution pertaining thereto. The transaction is to be recorded in the pledge register.

REDEMPTION OF PREFERENCE SHARES (PART D Section 37)

Some classes of preference shares (i.e., shares issued to preference shareholders who have "a preferred right" on winding up of a company) may contain a right to be redeemed (i.e., payment by the company for the return of the preference shares) This would be contained in the rights to the preference shares, which are to be reviewed to confirm redemption requirements. (NB: Please refer to Section 8E of the Income Tax Act prior to contemplating a redemption of preference shares.)

Kindly note that the rules that governed the redemption of preference shares in terms of the Old Act ,i.e. Section 98 of the Old Act (i.e., redeemed out of profits or a fresh issue of shares etc) no longer applies.

Requirements:-

- Preparation of a liquidity and solvency statement of the directors;
- Resolution of the directors noting the redemption;
- Payment of STT (calculated at R0,0025 for every R10 or part thereof);
- Cancellation of the share certificate pertaining to the redeemed preference shares;
- Manual or electronic update of share register.

KINDLY NOTE THAT NO CoR FORM REQUIRES LODGEMENT WITH CIPC WITH REGARD TO THE REDEMPTION OF PREFERENCE SHARES (Old Act - a Form CM 19 was prepared and lodged with CIPRO). It is recommended that a schedule of redemption, duly signed by a director or the company secretary be prepared and kept on file.

BUY-BACK/REPURCHASE OF SHARES (PART D Section 48) Unalterable provision

Companies may re-purchase (or buy back) shares from its shareholders. This was also the case in the Old Act, however, a special resolution was required for all entities to authorise the buy-back (authority of shareholders was renewable at every AGM).

Requirements:-

- After re-purchase there must still be ordinary shares in issue;
- Preparation of a liquidity and solvency statement by the directors;
- Cancellation of the share certificate pertaining to the shares re-purchased;
- Manual or electronic update of share register;
- Payment of STT (calculated at R0,0025 for every R10 or part thereof);
- Resolution of the directors approving the buy-back of shares required (check MOI and New Act);
- Share Transfer/Deed form.

Shareholder approval via special resolution is required in the following instances :-

- if any shares are to be acquired by the company from a director or prescribed officer of the company or a person related to a director or prescribed officer of the company.
- subject to the requirements of Section 114 and 115 (affected or fundamental transaction) if considered separately or together with another transaction in an integrated series of transactions, it involves the acquisition of more than 5% of the issued shares of any particular class of the companies' shares. (i.e., see notes on TRP below).
- JSE requirement for public listed entities.

KINDLY NOTE THAT NO CoR FORM REQUIRES LODGEMENT WITH CIPC WITH REGARD TO THE BUY-BACK OF SHARES (Old Act - Form CM 14A, accompanied by the liquidity and solvency statement of the directors was prepared and lodged, together with a special resolution with CIPRO).

NB: TRP approval may be required

NB: Beneficial ownership changes to be reported to CC / Updated register required.

DEFINITION OF “DEEMED” DIVIDEND:

Taking into consideration the Taxation Laws Amendment Act 24 of 2011 (“TLAA”) w.e.f. 1 April 2012, “deemed” dividend means, any amount transferred or applied by a company that is a resident, for the benefit or on behalf of any person respect of any share in that company, whether that amount is transferred or applied by way of a distribution made or as consideration for the acquisition of any equity share (i.e. an equity share buy-back).

Specific exclusions from the definition of “deemed dividend” is an amount transferred or applied which :-

- Equals the return of contributed tax capital (“CTC”) (i.e., the equity shares are bought back for its original cost price); or
- Results in a reduction of contributed tax capital (i.e., the equity shares are bought back at a loss); or
- Constitutes a capitalisation issue of equity shares in that entity (i.e., equity shares are issued to a shareholder in lieu of repayment to the shareholder for its shareholder’s loan account); or
- Is paid to the recipient shareholder which is not an individual (i.e. DWT is only applicable in the instance of an equity share buy-back where the shareholder is an individual).
- Is a general equity share buy-back by a JSE listed company (subject to certain specific JSE requirements.)

If any company (other than an exempted JSE listed company as mentioned above) buys back its equity shares and pays out the proceeds to the shareholder of the company, being an individual, and these proceeds are “in excess of the CTC” (i.e the equity shares have been bought back for a consideration exceeding its original cost), the company is obliged to deduct 20% Dividend Withholding Tax (“DWT”) on this excess and is responsible for paying this amount over to SARS.

Example:

The equity shares were originally issued to the individual shareholder for an amount of R20 000. The company then buys back these equity shares for a consideration of R50 000. R20 000 of the R50 000 will be considered a return of contributed tax capital (i.e., refund of the original subscription price) and R30 000 will be considered a “deemed” dividend on which DWT must be paid.

The individual shareholder in this example will receive R20 000 (the original cost of the shares) + R24 000 (R30 000 – R6 000) = R44 000. The company will then pay SARS the R6 000 DWT.

Had the company bought back the shares for R20 000 (its original subscription price) then no DWT would be payable.

NB:

- The company is not liable for the DWT, although the company usually arranges for the deduction and remittance of the DWT to SARS.
- There is no CGT payable in this instance.

EMPLOYEE SHARE SCHEMES (CHAPTER 4 SECTION 97)

The New Act requires that CIPC, w.e.f 1 May 2011, be notified of the establishment of employee share schemes. A copy thereof is to be filed with CIPC within 20 business days of the establishment of the scheme under cover of a Form CoR 46.1.

Note: Seek legal opinion, as once this document is filed with CIPC it becomes public knowledge

In addition, within 60 business days after the end of the company's financial year end, a Form CoR 46.2 is to be filed with CIPC. The form is required to be signed by the Compliance Officer, certifying that all the requirements of the Act in terms of the Employee Share Scheme have been complied with during the course of the company's financial year.

NB: If a company has complied with Section 97(1)(a)(i)(ii) and (b) of the New Act, it is exempt from having to obtain shareholder approval via special resolution in the undermentioned circumstances :-

- allotting shares to the employee share schemes (Section 41(2)(d))
- providing loans or financial assistance to employees to acquire shares in the employee share scheme (Section 44(3)(a)(i))
- providing of loans or financial assistance to directors to acquire shares in the employee share scheme (Section 45(3)(a)(ii))

OFFER OF SHARES TO THE PUBLIC (I.E. PUBLIC ENTITIES) / PROSPECTUS

The current position retained with some modifications to ensure alignment with security exchange listing requirements is not dealt with on this course, however CIPC prospectus documentation as detailed below has been included for information purposes only.

- Applications to exclude categories of persons from rights offer – (Section 99 – CoR 46.3)
- Application to register a prospectus for file a letter of allocation – Form CoR 46.4 accompanied by copy of the prospectus or other documentation required. CIPC to issue CoR 46.5
- Application to CIPC to allow required information to be omitted from a prospectus.
- JSE listing requirements.

TAKEOVER REGULATIONS PANEL – TRANSACTIONS REQUIRING DISCLOSURE (PART C OF CHAPTER 5) (FORMS TRP 121.1; TRP 121.2 (S122, REGULATION 121) AND TRP 98 (REGULATION 98)

PART B CHAPTER 5 APPROVAL FOR CERTAIN FUNDAMENTAL TRANSACTIONS SECTIONS 112 – 116 (INCLUSIVE)

PART C CHAPTER 5 AUTHORITY OF PANEL AND TAKEOVER REGULATIONS SECTIONS 117 – 120 (INCLUSIVE)

PART C CHAPTER 5 REGULATION OF AFFECTED TRANSACTIONS AND OFFERS SECTIONS 121 – 123 (INCLUSIVE)

Functions of the TRP

- primary function is to regulate “affected/fundamental transactions” and “offers”

Exemptions from having to comply with the requirements of the TRP (Old Act Securities Regulations Panel)

In terms of Sections 112 and 115

- in pursuant to or contemplated in a business rescue plan (as dealt with under Section 9 of the course file);between or among :-
- a wholly owned subsidiary company and its holding company;
- two or more wholly owned subsidiaries of the same holding company;
- a wholly owned subsidiary of a holding company on one hand and its holding company and one or more wholly owned subsidiaries of that holding company on the other hand;
- related or inter-related parties in a private company.
- Shelf companies

Correspondence received from CIPC in this regard included on CD.

Applicable

Prior to the occurrence of an affected/fundamental transaction (i.e., a transaction or series of transactions which results in a significant change of control (i.e., 35% and more of the holders of the voting securities) of a regulated company.

Regulated Entities (i.e., parties affected):-

- public companies;
- statutory corporations (including JSE listed companies);
- private companies – if 10% or more of the shares have been traded in the past two years (excluding transfers between related or inter-related parties);
- any entity which voluntarily elects to be regulated by the TRP (in terms of its MOI).

Affected/fundamental transactions can be implemented by various mechanisms, including :-

- a general offer or proposal of any sort. Offeror and all persons “acting in concert” (any action pursuant to an agreement between or among two or more persons in terms of which any one of them co-operate for the purposes of entering into or proposing an affected transaction/offer are also required to comply with the requirements of the TRP);
- a scheme of arrangement;
- disposal of all or the greater part of the assets of a regulated company.

NB: If after 1 May 2011 an affected/fundamental transaction results in a 35 or greater % change of control of a regulated company, the company may need to satisfy the requirements of the TRP. The TRP may issue a compliance certificate or an exemption notice regarding the transaction.

Correspondence in this regard to be sent to :-

Lucky Phakeng or lphakeng@trpanel.co.za or Basil Mashabane at bmashabane@trpanel.co.za or admin@trpanel.co.za

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SECTION 6

REGISTERED OFFICE AND POSTAL ADDRESS /RETENTION OF RECORDS AND ACCESS TO INFORMATION (PART C OF CHAPTER 2)

REGISTERED OFFICE AND POSTAL ADDRESS (Section 23(3) and Regulation (21) and Section 25 and Regulation 22)

In terms of the New Act (and Old Act) every entity must have an office in RSA. The registered office and postal address of the company are the addresses to which CIPC/SARS will send their notices. It is also the address to which legal notices will be delivered and determines the identity of the court which will have jurisdiction over the company. It is considered to be situated at the principal office from which an entity's administrative functions are performed and not an office of convenience such as that of a third party, i.e., auditors' office addresses.

- Upon incorporation of an entity, its registered office particulars are to be reflected on its Notice of Incorporation.
- If the address is changed for any reason, **a Form CoR 21.1** Notice of Change of Registered Office (no CIPC fee) is to be filed with CIPC. Kindly note that this document is a FICA requirement and entities bankers are to be notified accordingly.
- The effective date of the change of office will be the date inserted on the Form, however this date must be at least 5 business days after the date of the filing of the notice.

(Old Act – lodgement of Form CM 22 with CIPRO)

If the statutory books and records of the entity or part thereof are not kept at the registered office of the entity, **a Form CoR 22** Notice of Location of Company Records (Section 25) (no CIPC fee) is to be filed with CIPC. E.g., Auditors offices acting as registered office or Transfer Secretaries retaining the share register of the entity.

(Old Act – lodgment of Form CM 21 with CIPRO)

Procedural requirements:-

- Prepare a resolution of the directors noting the change of registered office/postal address; location of statutory records;
- Advise SARS via e-filing of the change of registered office particulars.

REGISTERED OFFICE AND POSTAL ADDRESS (Section 23(3) and Regulation (21) and Section 25 and Regulation 22) (cont/d)

- Write up the manual or electronic register.

SUBMISSION OF CHANGE OF ADDRESS DOCUMENTS WITH CIPC

Ensure you have the following documents and each must be sent in a SEPERATE EMAIL:

- Signed form CoR21.1
- Recent Certified ID/Passports' of the director signing the form CoR21.1
- Signed form CoR22
- Copy of the signed Resolution noting change of location of records
- Recent Certified ID/Passports' of the director signing the form CoR22

* Note the resolution noting the change of address is an internal document and does not need to be sent to CIPC however the location of company records' resolution must be sent to CIPC.

The above documents must be sent to companychanges@cipc.co.za for registration. Alternatively, you can log onto the CIPC website, click on company address change, enter company number, and follow the prompts as requested. After 5 days, an updated CIPC Disclosure Certificate will need to be drawn from the CIPC website and will be emailed to the CIPC applicants email address.

RETENTION OF RECORDS (Section 24 and 25)

As per the New Act, the following records are to be retained in written form, or other form or manner (i.e., electronically) that allows for that information to be converted into written form within a reasonable period of time. Records should preferably be kept at the company's registered office (Section 25) for a minimum of 7 years.

- MOI and all amendments/alterations thereto *
- Rules *
- Register of Directors; Company Secretary; Auditor and Committee Members *
- All documentation presented at an AGM *
- All AFS *
- All Notices; all minutes of shareholders meetings; all resolutions adopted by shareholders (preferably pasted into a minute book)
- Copies of any written communication sent to any class of shareholders *
- Any document made available to shareholders in relation to shareholders resolutions *
- Profit Companies – securities register*
- **All minutes of directors' meetings; all resolutions of directors (preferably pasted into a minute book).**
- **Minutes of Directors' Committee meetings including audit; nomination; remuneration; social and ethics; risk etc.**
- **Accounting records required by the Act (Section 28)**

It is a criminal offence not to retain the abovementioned documentation in the prescribed manner or form; or to falsify any accounting records or permit any person to do so and fail to keep accurate or complete accounting records.

SOC's must comply with the most stringent retention of records requirements between the New Companies Act and the Public Finance Management Act.

Other Acts that govern the retention of records include :-

Municipal Finance Management Act; Close Corporations Act; Basic Conditions of Employment Act; Auditing Profession Act; Compensation for Occupational Injuries and Diseases Act; Occupational Health and Safety Act; National Credit Act; Electronic Communication and Transaction Act; Income Tax Act and Consumer Protection Act.

NB: POPIA focuses on protecting personal information, whilst PAIA focuses on accessing information.

ACCESS TO RECORDS (Section 26 and Regulation 24)

Shareholders have the right, at no cost to inspect and copy the information of the abovementioned * documents

NB

- **Exclusions for shareholders being those highlighted in red, i.e., its accounting records; the minutes and resolution of the directors, directors' committees and audit committee and where applicable, the records of its company secretary and auditor. NB refer to MOI in the event that it allows for additional information to be made available to shareholders (Section 26(3)).**
- **Exclusions for general public as detailed above and include annual financial statements of private entities.**

In order to exercise their rights, the shareholder or any other person in terms of Section 26 may in the prescribed manner approach:-

- the company directly (preferably) utilising the voluntary Form CoR 24 - Request for access to company information
- the Human Rights Commissioner (www.sahrc.org.za) and the Department of Justice <https://www.justice.gov.za/paia/paia.htm> and the Information Regulator <https://info regulator.org.za/paia/> in regard to the Promotion of Access to Information Act 2000 Act no.2 of 2000.

In addition, the MOI of the entity may establish additional information rights of any person in respect of any information pertaining to the entity, but no such right may negate or diminish any mandatory protection of any record as set out in Part 3 of the Promotion of Access to Information Act 2000.

NB: It is recommended that the provisions of The Protection of Personal Information Act No. 4 of 2013 (POPIA) be reviewed, prior to the disclosure of any information on the company.

Records which are allowed to be inspected must be available during business hours to members/shareholders at no cost and to any other person at a fee not exceeding R100.

The rights of access to information as set out in Section 26 of the New Act are in addition to and not in substitution for any right a person may have to access information in terms of:-

- Section 32 of the Constitution
- the Promotion of Access to Information Act 2000 (Act 2 of 2000) (PAIA)
- any other public regulation.

Failure to accommodate any reasonable request for access or to unreasonably refuse access to any record that a person has to inspect or copy in terms of this Section 26 of the Act, is an offence.

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SECTION 7

MANAGEMENT (PART F OF CHAPTER 2)

DIRECTORS (Sections 66 – 77 (inclusive))

A director is a member of the board of a company and includes any other person occupying the position of a director or alternate director however designated.

In terms of Section 66, a person only becomes a director when that person has given his or her written consent to serve as a director after having been appointed/elected or holding office in terms of this Section.

“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 its powers and perform any of the functions of the company, except to the extent that the “New Act” or the company’s MOI provides otherwise.” – Section 66(1).

The New Act introduces a partial codification of directors’ duties, which includes both a fiduciary duty and a duty of reasonable care in addition to existing common law duties. The MOI can limit the powers of the Board.

Duties of Directors, including alternate directors and applicable to non-directors as detailed below (Section 76)

- **Fiduciary duties** – act in good faith, proper purpose and in the best interests of the company (including disclosure of personal financial interest (S75); not to abuse the position of director or information obtained as a director for self-gain or knowingly cause harm to the company (and subsidiary/ies) and disclose any material information that comes to the attention of the director.
- **Duty of reasonable care** – degree of care, skill and diligence reasonably expected of a person carrying out the same functions in relation to the company as those carried out by the director and having the general knowledge, same skill and experience of that director, i.e., the reasonable man test.

King IV™ Assists directors and non-directors/management in fulfilling their legal duties and complying with legislation.

NB: The duties and responsibilities as detailed above, in terms of the New Act, also applies to any “designation” such as alternate directors; ex-officio directors (i.e. who holds office as a director of a particular company solely as a consequence of that person holding some or other office/title or designation) and non-directors (members of audit committees (shareholder committee); board committee members (e.g. Remuneration; Nomination; Risk; Social and Ethics committees) and “prescribed officers”.

Definition of Prescribed Officers (Regulation 38)

- **A person who may not be a director, exercises general executive control over and management of the whole, or a significant portion of the business and activities of the company; or regularly participates to a material degree in the exercise thereof.**

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It is therefore very important that employees of the company who fall within the definition of a “prescribed officer” be identified and advised of their duties and responsibilities; standards of conduct; statutory liabilities in the event of a breach; their exposure to personal liability by claims from third parties and the limitations of indemnity insurance cover which may be taken out on their behalf by the company.

Liabilities of Directors (including alternate directors and non-directors as detailed above) (Section 77)

- Breach of fiduciary duty or duty of reasonable care;
- Non-disclosure of personal material direct and indirect interests of the director/s or related or inter- related parties.
- Unlawful utilisation of privileged/confidential information for personal gain or to cause harm to the company.

The New Act inclusion of Section 218 states that: “any person who contravenes any provision of the New Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention”

Business judgement rule “the reasonable man’s test” to be utilised in determining liability of Director

Questions to be raised in determining a director’s liability:-

- Did the director take reasonable diligent steps in becoming informed on the matter at hand?
- Does the director have any personal interest in the matter at hand; did the director have reason to believe or suspect that a related party has an interest in the matter at hand; and was it disclosed?
- Did the director take a decision or vote in favour of a decision of the board/board committee regarding the matter at hand?
- Did the director have a rational basis for believing, and did believe, that the decision was in the best interests of the company?

Note: Directors have the right to rely on certain persons (i.e., employees believed to be reliable, professional advisors and board committees the director/s are not members of) in exercising their power and performing their duties.

Indemnification against liability of directors (including alternate directors and non-directors as detailed above) (Section 78)

The New Act limits the extent to which a company may insure itself and its directors in that it may not indemnify a director against any liability arising from :-

- gross negligence, willful or reckless misconduct, breach of trust or fraudulent activities on the part of the director/s; or

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- any fine imposed on the director/s in terms of any national legislation.
- a director acting in the name of the company or on behalf of the company when knowingly not having the authority to do so.
- a director knowingly carrying on the business of a company in insolvent circumstances.

Note: A company is entitled to claim restitution from a director/s of a company or a related party/ies for any money paid directly or indirectly by the company to, or on behalf of that director/those directors/related party/ties.

Director Disqualifications (can have recourse)

- Court declaration that the person is delinquent;
- Un-rehabilitated insolvent;
- Prohibited by public regulation;
- Removed from office of trust, on the grounds of misconduct involving dishonesty;
- Convicted of a crime of dishonesty (theft, forgery, perjury or money laundering, terrorist financing or proliferation financing activities as those terms are defined in Section 1(1) of FICA) without the option of a fine. (Disqualification applicable for a minimum period of 5 years from date of removal of office). Prior to expiry, the Commission may apply to court for a further extension (in periods of 5 years at a time).

Section 69(11) provides that a Court can exempt any person from the application any of the abovementioned provisions.

Director Ineligibility (can never be a director) (Section 69)

- A juristic person;
- Unemancipated minor (under the age of 18);
- Unqualified as per the MOI.

Director Appointments (Section 66)

- Incorporators of a new company are deemed to be the company's first directors if initial directors' particulars do not appear on the incorporation documentation. (Note: On the formation of an entity, CIPC have not allowed for registrations thereof if the particulars of the minimum number of directors required, dependent on type of company, are not recorded on the **Form CoR 14.1 Annexure A (initial directors)**).
- MOI of profit companies must state that a minimum of 50% of the directors (including alternate directors) are to be elected individually by the shareholders entitled to vote on this matter.
Appointment may be for an indefinite period or as detailed in the MOI.
- Temporary appointments allowed by board members to fill a vacancy if so detailed in the entity's MOI. Vacancies are to be filled within 6 months of having arisen or in the case of a public entity at the next AGM. (Section 70 (3)(ii)).

Procedure to be followed when appointing a new director:-

- Review MOI (or Memorandum and Articles of Association) with regard to its requirements, i.e., minimum/maximum number of directors; whether sufficiently qualified to hold office, i.e.,

minimum skills required to fulfill a particular function etc.

- Director's to consent to their nomination and subsequent appointment required. (Old Act - Form CM 27 (consent to act as director/officer). New Act no specified form. It is suggested that a similar document be utilised. All director's personal particulars are to be supplied as required on the **Form CoR 39**, including their cell phone numbers and email addresses and recently added fields include gender; race; disability; foreign national (required for assurance purposes).
- Directors are to undergo proper induction and training (i.e., advising of rights, duties, responsibilities, liabilities). Directors are also to be provided with a copy of the company's MOI (or Memorandum and Articles of Association); all agreements; contracts. The New Act and regulations; King IV™; all the company's policies and procedures; terms of reference of all committees etc). Training to be ongoing, based on outcome of annual Board performance evaluation.
- Resolution of the directors/minutes of a meeting of the shareholders required approving appointment.
- Write up manual or electronic register.

Declaration of interests

- Director to declare his/her interests – Section 75 (**Voluntary Form CoR 36.4** internal document not requiring submission to CIPC, which requires updating continually). It is suggested that non-directors as classified above, also disclose their interests to the Board.

If a director has an interest in a matter before the board, he/she is obligated to disclose the interest and general nature of the matter; any material information known to him/her and to leave the meeting after having made the disclosure. Quorum is still considered present during his/her absence. He/she may neither participate in deliberations nor vote on the matter at hand, nor be involved in the conclusion process of the matter thereafter.

Board decision valid if :-

- approved after disclosure of interest; or
- approved without disclosure of interest, but subsequently ratified by an ordinary resolution of the shareholders following the disclosure of interest.
- declared valid by the Court.

Filing requirement

Section 70 (6) and Regulation 9 (follow OPT process) - In the case of an appointment/resignation/removal/termination of office of a director, a Form CoR 39 Notice of Change of Directors is to be submitted to CIPC via the upload facility or manually via email to manualcor39@cipc.co.za within 10 business days of the date of the change of director, together with the undermentioned documentation (Old Act CM 29):-

- a copy of the minute/resolution of the directors noting the changes in directorate (NB Note CIPC Practice Notice no. 3 of 2019). If a change in the directorate is noted within a Board meeting, an extract thereof may be submitted, duly signed by the Chairperson or Company Secretary, accompanied by a copy of the signed attendance register of the meeting. If a change of directorate is noted by round robin resolution, all Board members to sign (exclusions being resigned director or newly appointed directors' signature, unless the company has a sole director and the resignation/appointment is undertaken simultaneously).
- recent identifiable certified copies of the RSA ID of ALL the board members whose status is changing, (i.e., those resigning and those being appointed) and the company secretary (if CoR39 is signed by them) and the authorised filing agent. If unable to obtain, submit an affidavit with CIPC explaining reasons why it is unattainable.

- a mandate on the company's letterhead authorizing the filing agent to submit the Form CoR 39 with CIPC for and on behalf of the company.

Director Vacancies arise from:

- The expiry of a term of office (or as detailed in the MOI).
- Resignation
- Death
- Incapacitation
- Declared delinquent by the Court
- Becomes disqualified (as detailed above)
- Removed by the shareholders or the Board or by Court order.

Director Removal (Section 71)

- (1) Despite the provisions of the MOI; any agreement between the company and the director; or any agreement between a shareholder and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to Subsection (2):-
- (2) Before the shareholders of a company may consider a resolution contemplated in subsection (1) -
 - (a) The director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and
 - (b) The director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.
- (3) If a company has more than two directors and a shareholder or director has alleged that a director of the company –
 - (a) has become –
 - ineligible or disqualified in terms of Section 69, other than on the grounds contemplated in section 69(8)(a); or
 - incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
 - (b) has neglected, or been derelict in the performance of, the functions of director,

The board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

- (4) Before the board of a company may consider a resolution contemplated in subsection (3), the director must be given –
 - (a) Notice of the meeting, including a copy of the proposed resolution and a statement setting out the reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and prepare a response; and
 - (b) A reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.
- (5) If, in terms of subsection (3) the board of a company has determined that a director is ineligible or disqualified, incapacitated or has been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66(4) (a)(i) if applicable, may apply within 20 business days to a court to review the determination of the board.
- (6) If, in terms of subsection (3) the board of a company has determined that a director is not

ineligible or disqualified, incapacitated or has not been negligent or derelict, as the case may be

-
- (a) Any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director may apply to a court to review the determination of the board; and
- (b) the court, on application in terms of paragraph (a) may –
 - (i) confirm the determination of the board; or
 - (ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.
- (7) An application in terms of subsection (6) must compensate the company, and any other party, for costs incurred in relation to the application, unless the court reverses the decision of the board.
- (8) If a company has fewer than 3 directors
 - (a) Subsection (3) does not apply to the company;
 - (b) In any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and
 - (c) Subsections (4) (5) and (6) each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.
- (9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have at common law or otherwise to apply to a court for damages or other compensation for –
 - (a) Loss of office as a director, or
 - (b) Loss of any other office as a consequence of being removed as a director.
- (10) This section is in addition to the right of a person, in terms of Section 162, to apply to a court for an order declaring a director delinquent or placing a director on probation.

NB: The removal of a director may constitute a breach of employment contract between the respective director and the company. The removed director retains the right to institute any claim in terms of common law for damages or other compensation for loss of office as a director. It is suggested that prior to embarking on the removal of a director, an expert opinion be obtained from a labour law attorney to determine the company's possible liabilities in this regard.

Procedure to be followed when the services of a director is terminated:-

- Review the MOI (or Memorandum and Articles of Association) with regard to its requirements, i.e., minimum/maximum number of directors.
- Letter of resignation where required.
- Resolution of the directors/minutes of a meeting of the shareholders and attendance register accepting resignation/approving removal.
- Write up manual or electronic register.

Follow the same abovementioned filing procedure as for appointment of directors

Remuneration of Directors – Section 66(9)

New Act requirement: Special resolution required to approve remuneration for services of all directors for services as a director, i.e., directors' fees.

As per legal opinions read on this subject:-

- the above should be read as follows :-

A special resolution is required annually (usually at an AGM) to approve primarily remuneration of non-executive directors and executive directors (to the extent of services rendered in excess of their employment contracts) This can be approved for a period of two years in advance.

NB: Directors and non-directors (as detailed above)'s remuneration to be disclosed in the annual financial statements of a public company on an individual basis. (Section 30(4)).

DEFINITIONS

Ex-Officio Directors: S66(4)(e) provides for executive directors to be “ex-officio” directors

De facto director: a person who acts as a director without being officially appointed as a director but performs the acts/duties of a director. Whether or not they fulfill the qualification of a director or enjoy rights and privileges of a director, he or she is held liable as a de jure director.

Shadow director: holder of controlling or majority stock (share) of a private company who is not technically a director and does not openly participate in the firm’s governance, but who’s directions and instructions are routinely complied with by the employees or other directors (considered as a de facto director).

21 NORTH STREET
JOHANNESBURG
2196

19 June 2016

The Director
EXAMPLE COMPANY PROPRIETARY LIMITED

Dear Sir

I hereby tender my resignation as director of the company with immediate effect, as from 20 June 2014

Yours faithfully

{INITIAL AND SURNAME OF DIRECTOR}

PLEASE PRINT ON THE COMPANY LETTERHEAD

Date :

CIPC
Cor39 Department

Dear Sirs

EXAMPLE COMPANY PROPRIETARY LIMITED

REGISTRATION NO: 2014/123456/07

I hereby authorise Linda Jean Opie and/or Bianca Braham, currently employees of Companies House Secretarial Services (Pty) Ltd, Registration No: 1999/024207/07, to lodge the attached Form Cor39 with the CIPC on our behalf.

Yours faithfully

J DOE
DIRECTOR

CIPC PRACTICE NOTICE NO: [6 of 2025](#)

DATE OF ISSUE: 18/12/2025

REVIEW OF UPDATE OF CONTACT DETAILS OF DIRECTORS AND DIRECTORS' AMENDMENTS

This practice note is issued in terms of Regulation 4(1)(b) of the Companies Regulations of 2011 which stipulates that a regulatory body may issue a practice note in respect to a matter within its authority which sets out a procedure that will be followed by that regulatory agency, a procedure to be followed when dealing with that regulatory agency or that regulatory agency's interpretation of or intended manner of applying a provision of the Act or the Regulations.

One of the functions of the Commission in terms of Section 187(4)(b) of the Companies Act 71 of 2008, as amended, is that "The Commission must receive and deposit in the registry any documents required to be filed in terms of this Act;". All filings with the Commission are received in good faith, and the Commission always takes reasonable steps to ensure that the registers are credible despite relying on entities for such information.

With the latest developments and in conjunction with other relevant statutory bodies, the Commission has decided to once again review its processes regarding the above, with a view to eradicating unauthorised changes.

- 1) Henceforth, the duration for objecting to the change of contact details will be increased from 24 hours to 72 hours to give enough time for the legitimate owners to object.
- 2) Further to the above, other directors will be notified as well of the changes to communicate the same with the director concerned in the event the changes are not legitimate.
- 3) When there are changes of directors, all directors will be informed of the changes and not only the director(s) affected by the change, thus avoiding the board from realising later that the self-appointed director(s), and
- 4) The changes of directors will only take effect upon the submission of at least 50+1% of OTP's by the directors.

These changes will take effect whilst we continue to do verification with the Department of Home Affairs' National Population Register and with our in-house Foreigner Verification for Non-Citizens.

We hope that you find the above in order.

COMPANY SECRETARY

Public companies "Ltd" and State-Owned Companies "SOC" are, in terms of the New Act, obligated to appoint a Company Secretary. In addition, those entities which voluntarily elect to be audited can also elect whether to comply with the requirements of Chapter 3 of the New Act (i.e., Enhanced Accountability and Transparency Requirements) with regard to the appointment of a Company Secretary and audit committee.

Eligibility/Qualifications

None specified in New Act. It is the responsibility of the directors to ensure that the company secretary has the necessary qualifications, experience and expertise to fulfill this role. New JSE listed companies' requirements – Company to report on qualifications and experience of their Company Secretary. Company secretary must be permanent resident of RSA. Position can be held by a Juristic person or partnership.

Duties include, but not limited to (Section 88):-

Accountable to the Board.

- Guidance of directors;
- Bringing to the attention of the directors, relevant laws and liabilities for non-compliance;
- Recording of minutes;
- Certifying that the "Ltd" or "SOC" has lodged with CIPC, all returns required in the terms of the New Act and that such returns are true, correct and up to date (Section 88(1) e);
- Ensuring that a copy of the "Ltd" or "SOC" AFS have been sent, in accordance with the New Act, to every person entitled to receive a copy thereof, including CIPC.
- Filing information returns in terms of the annual transparency and accountability report for "Ltd" and "SOC"

Procedure to be followed when appointing/resigning and removing a company secretary:-

- Review the MOI (or Memorandum and Articles of Association) with regard to its requirements, i.e., procedure to be followed upon the removal of the company secretary, if silent revert to the New Act requirements; whether the proposed newly appointed company secretary is sufficiently qualified to hold office, i.e., minimum skills required to fulfill a particular function etc.
- Company Secretary's consent to their appointment required. (Old Act - Form CM 27A (consent to act as the company secretary, which required lodgement with CIPRO). (New Act no specific form. It is suggested that a similar document be utilised. All company secretary's personal particulars are to be supplied including their cell phone numbers and email addresses, even though this information is not required on the Form CoR 44).

- Letter of resignation in the case of a resigning company secretary;
- Board appointment therefore a resolution of the directors is required to approve the appointment or note the resignation or removal of the company secretary;
- Write up manual or electronic register.

Section 85(3) and Regulation 44) - In the case of an appointment/removal/termination of office of a company secretary, a Form CoR 44 (Old Act CM 27A) is to be electronically submitted to CIPC (within 10 business days of the date of the change of secretary), together with recent identifiable certified copies of the RSA ID of the company secretary and signatory on the form

SUBMISSION OF COR44 WITH CIPC:

The above documents must be emailed to cor44@cipc.co.za to be registered or submitted electronically per the above note

Removal of the Company Secretary (Section 89)

If a company secretary is removed from office, a statement by the company secretary advising of the circumstances surrounding the removal is to be included in the Annual Financial Statements of the company.

COMMITTEES

IN ADDITION TO THE UNDERMENTIONED NOTES. REFER TO SECTION 10 ON CORPORATE GOVERNANCE IN THE COURSE FILE

Dependent on the contents of a company's MOI, the Board may appoint any number of committees to which it may delegate any of its authorities, however the Board, in terms of the King Code, may not abdicate its responsibilities and will remain liable for its responsibilities.

AUDIT COMMITTEE – STATUTORY COMMITTEE:

Public companies "Ltd" and State-Owned Companies "SOC" are, in terms of the New Act, obligated to appoint an Audit Committee. All other entities may voluntarily elect to appoint an audit committee in terms of the requirements of Chapter 3 of the New Act (i.e., Enhanced Accountability and Transparency Requirements).

Procedure to be followed when appointing/resigning an audit committee member

- Review the MOI (or Memorandum and Articles of Association) with regard to its requirements, i.e., procedure to be followed upon appointment/resignation of an audit committee member. If silent revert to the New Act requirements; whether the proposed newly appointed audit committee member is sufficiently qualified to hold office, i.e., minimum skills required to fulfill the role of an audit committee member. The Minister may prescribe minimum qualifications for the appointment of Audit Committee members.
- Review the Audit Committee Charter (which should be in line with the MOI).
- Board committee, therefore appointed by the board. Resolution to this effect is required.
- Statutory committee in that it is required to report to the shareholders at the AGM.
- Audit Committee Members' consent to their nomination and appointment required. It is suggested that a similar document as to the consent to act as director/secretary be utilised. All audit committee member's personal particulars are to be supplied, including their fax numbers (if applicable) and cell phone numbers and email addresses. Letter of resignation in the case of a resigning audit committee member/ Consent to appointment;
- Board resolution;
- Write up manual or electronic register.

Section 85(3) and Regulation 44 – in the case of an appointment/termination of office of an audit committee member, a Form CoR 44 is to be submitted electronically to CIPC (within 10 business days of the date of appointment/resignation) together with recent identifiable certified copies of the RSA ID of all the audit committee members/the company secretary/signatory of the form.

SUBMISSION OF COR44 WITH CIPC:

The above documents must be emailed to cor44@cipc.co.za to be registered or submitted electronically per the above note.

SOCIAL AND ETHICS COMMITTEE:

All Ltd's and SOC's requiring an audit and all private entities whose public interest score is in excess of 500 points in the past 2 years are required to establish a Social and Ethics Committee. Exemption from the formation of this type of committee may be sought from the Companies Tribunal.

Commented [S11]: Section 72: Board Committees In short, the more significant implication is that members of the social and ethical committee of a public company or state-owned company will now be appointed / elected (similar to that of the audit committee) by shareholders at the AGM on an annual basis. Members of the social and ethics committee of any other company will continue to be appointed by the board of directors of the company, but such appointment must now also be done on an annual basis.

PUBLIC OFFICER:

Duties of a public officer:

In terms of the provisions of Section 101 of the Income Tax CT No 58 of 1962 as amended the management of a corporate entity is obliged to appoint a public officer who will be responsible for attending to the tax affairs of the company.

The duties and responsibilities of the public officer include the following:

Attending to all the income tax affairs of the company, including the submission of tax returns in the prescribed form, answering any questions or providing explanations which may be required to determine the tax liability of the company, the payment of taxes on behalf of the company as provided for in the main act as well as the Fourth Schedule of the said act.

The completion of the prescribed forms advising SARS of the declaration of any dividends and the payment of the withholding tax on behalf of the company as a result of such dividend declaration.

The registration of the company as an employer, should the company become an employer in terms of the definition of an employer in the Fourth Schedule of the Income Tax Act.

The payment of STT in terms of the Securities Transfer Tax Act no. 25 of 2007.

The registration as a vendor when the company becomes a vendor in terms of the definition of a vendor as defined in the Value Added Tax Act No 89 of 1991 as amended.

The payment to SARS of the withholding Tax of Royalties where royalties are paid to a person who is not a Republic of South Africa taxpayer.

Should an appointment to the position of Public Officer not be made within the one-month prescribed period provided for making such an appointment, one of the directors will be appointed to the position without further correspondence.

Procedure to appoint/resign a public officer:-

- resolution of the directors approving the appointment/noting the resignation of a public officer;
- SARS to be advised by e-filing;
- write up manual or electronic register.

SHELF CO PROPRIETARY LIMITED
REGISTRATION NO: 2017/000000/07

RESOLUTION OF THE DIRECTORS PASSED

RESOLVED

That the resignation ofas Public Officer of the company is hereby accepted with effect from the date hereof.

RESOLVED

Thatis hereby appointed Public Officer of the company with effect from the date hereof in place of who resigned.

.....has consented to this appointment as indicated below.

I,hereby consent to my appointment as the public officer of the company.

Name of Public Officer

DATE

DIRECTORS:

Date

Date

Date

SECTION 8 - FINANCIAL STATEMENTS (PART C OF CHAPTER 2)

In terms of the New Act, every entity is required to prepare Annual Financial Statements, within 6 months of its financial year end, which AFS must satisfy one of the undermentioned financial reporting standards "FRS":-

- International Reporting Standards (IFRS)
- IFRS for Small and Medium Enterprises (SME's)

ENTITIES REQUIRING AN AUDIT

ALL PUBLIC COMPANIES AND ITS SUBSIDIARIES

LISTED

IFRS

- Listing requirements take preference over IFRS
- Must comply with Chapter 3 (Enhanced Accountability and Transparency Requirements)

UNLISTED

- IFRS (or IFRS for SME's provided it meets the requirements as detailed in IFRS for SME's)

STATE OWNED COMPANIES

- IFRS
- PFMA requirements take preference over IFRS
- Public Audit Act and all other applicable National Legislation
- Must comply with Chapter 3 (Enhanced Accountability and Transparency Requirements).

ENTITIES NOT REQUIRING AN AUDIT OR INDEPENDENT REVIEW (EXEMPTIONS Reg 28)

PRIVATE PROFIT COMPANIES

- Owner managed business (i.e. where every shareholder is also a director of the Company **AND** if its Public Interest Score is less than 100 and its AFS are not **internally compiled**. MOI to note no audit/AGM required.

ENTITIES REQUIRING AN AUDIT (cont/d)

PRIVATE PROFIT COMPANIES/CC'S/NON-PROFIT COMPANIES (INCLUDING EXTERNAL CO'S AND STATE OWNED NPC'S)

- MOI to note the audit requirement
- Public Interest Score exceeds 350 points (IFRS or IFRS for SME's)
- Public interest score is between 349 points and 100 points and AFS internally compiled.
- Holds assets in a fiduciary capacity in excess of R5 million in the ordinary course of its primary business for persons not related to the company.
- Subject to a compliance notice.

ENTITIES REQUIRING AN INDEPENDENT REVIEW

(Regulation 29)

PRIVATE PROFIT COMPANIES/CC'S/NON-PROFIT COMPANIES (INCLUDING EXTERNAL CO'S AND STATE OWNED NPC'S)

- Public interest score is between 349 points and 100 points and AFS are not internally compiled. Independent review to be undertaken by a registered auditor or member of an accredited professional body.
- Public interest score is at least 100 points and its AFS were internally compiled. Independent review to be undertaken by a registered auditor or member of an accredited professional body or an accounting officer.

AUDIT THRESHOLDS (TO BE UNDERTAKEN AT THE END OF EACH FINANCIAL YEAR)

NB: Certain private entities which have a greater responsibility to a wider public as a consequence of their significant social or economic impact may require an audit. Entities which are exempt must be either audited voluntarily or independently reviewed.

Calculation of Public Interest Score (i.e., economic or social significance of the entity)

- 1 point for every R1m outstanding unsecured debt
- 1 point for every R1m in turnover
- 1 point for every employee
- 1 point for every individual who has an interest in the entity's shares/members' interests.

If the PI score is 350 or more, the entity must be audited in accordance with any relevant FRS i.e., IFRS or IFRS for SME's provided it meets the requirements detailed in IFRS for SME's.

If the PI score is between 100 – 349, and AFS are internally compiled, the entity must be audited in accordance with any relevant FRS i.e., IFRS; IFRS for SME's

If the PI score is between 100 – 349, and AFS are not internally compiled, the entity must be independently reviewed by a registered auditor or an accredited member of a professional body.

If the PI score is less than 100, and AFS are not internally compiled, the entity must be independently reviewed by a registered auditor or an accredited member of a professional body or an accounting officer.

Eligible Independent accounting professional :-

- Registered auditor or;
- Member in good standing of a professional body accredited in terms of Auditing Professional Act; or
- Qualified to be appointed an Accounting Officer of a CC in terms of the Close Corporations Act and :-
- does not have a Personal financial interest in the entity/related entity; and
- is not involved in day to day management of the entity (or been so in the last 3 years); and
- is not a prescribed officer or full-time executive employee;
- is not related to any of the above.

AUDITOR (Section 90 - 93):

Note:

Entities other than Public Companies and SOC's which require an audit are exempt from having to appoint a company secretary; audit committee and appointing or re-appointing an auditor at an AGM. The MOI may however include these requirements.

Appointment (Section 90)/Resignation and the Filing of a vacancy (Section 91 and 89)

- To be appointed to all Ltd's and SOC's and all other entities which are compelled (in terms of the Public Interest Score) or all other entities which elect to be audited.
- To be appointed on incorporation and re-appointed at every AGM or Shareholders meeting)
- Only qualified practicing Chartered Accountants may perform an audit and must be permanent resident in RSA.
- Rotation of auditor (Section 92) Individual auditor may not act as such for more than 5 consecutive years (effective 1 May 2011, unless already appointed in terms of Corporate Law Amendment Act, 2006). May be re-appointed after a 2 year "cooling off period".
- Within 15 business days after a vacancy, the Directors are to propose the appointment of new auditors to:-
 - the shareholders/members of entities for their approval (in the absence of an audit committee) or
 - members of the Audit Committee for their consideration and approval prior to obtaining shareholder consent.
- Within 5 days after obtaining shareholders' approval of the proposal, the Directors may proceed with the new auditor appointment. In any event the appointment must be made within 40 business days of the vacancy.
- The Audit Committee is required to ascertain the independence of the auditors, in that they do not receive any direct benefit from the company, except for remuneration earned as an auditor and to approve the provision of certain allowed "non-audit" services, and terms of an engagement. Section 90(2)(b) (iv) prohibits an auditor from providing audit and certain specified "non-audit" services to the same client. This legislation's enforcement is effective from 1 January 2014.
- A retiring auditor may automatically be re-appointed at the AGM without a resolution to this effect, unless the retiring auditor no longer qualifies for appointment; OR is unwilling to accept the appointment OR the audit committee objects to the auditor appointment OR the company has given notice to the auditor that it intends to appoint another auditor..
- Appointment/Resignation of auditor is effective when the notice (Form CoR 44) is electronically/manually filed with CIPC.

Rights and Restricted functions of auditors covered under Section 93

Procedure to be followed when appointing (Section 90)/resigning (Section 91) an auditor

- Review the MOI (or Memorandum and Articles of Association) with regard to its requirements.
- Letter on auditors' letterhead, either consenting to their appointment (i.e., letter of engagement- full particulars of the individual auditor of an audit practice to be supplied; including practice number email address; cell number etc.) or a letter of resignation.
- Shareholder/director resolution approving the appointment/noting the resignation of an auditor.
- Write up manual or electronic register.

Section 85(3) and Regulation 44 - In the case of an appointment/resignation/removal of office of an auditor, a Form CoR 44 (Old Act – Form CM 31) is required to be electronically submitted to CIPC (within 10 business days of the date of the change of auditor), together with recent identifiable certified copies of the RSA ID of the signatory on the form (either a director or the company secretary) and if change of audit partner, the audit partner's RSA ID will also be required.

FINANCIAL YEAR END (Section 27)

- All companies must have a financial year end which must appear on its Notice of Incorporation (i.e., **Form CoR 14.1**).
- It may not be in excess of 15 months after the date of Incorporation.
- AFS are to be prepared within 6 months after the end of an entities' financial year end or such shorter period as may be appropriate to provide for the required notice period for the calling of an AGM (Section 30 of Part C Chapter 2).

Change of financial year end

- Board approval is required;
- It may only be changed once in a year;
- It may not exceed 15 months after the preceding financial year;
- CIPC to be notified timeously of the change of financial year end, i.e., the new financial year end date must be dated later than the date the Form CoR 25 is electronically filed with CIPC.

Procedure to be followed when changing the financial year end

- Resolution of the Directors;
- SARS to be notified via SARS e-filing;
- Auditors to be notified;
- Write up manual or electronic register.

Section 27(4) and Regulation 25 - In the case of a change to the financial year end of a company a Form CoR 25 (Old Act – Form CM32) CIPC fee – R100 is required to be electronically submitted to CIPC prior to the date of the new financial year end, accompanied by recent identifiable certified copies of the RSA ID of the signatory on the form (director/secretary)

SUBMISSION OF THE CHANGE OF YEAR END DOCUMENTS WITH CIPC

The above must be emailed to companychanges@cipc.co.za

Alternatively log onto CIPC and follow prompts. A New Certificate will need to be drawn off the CIPC website and will be emailed to the address of the person logged in as the customer.

Note: There is no specific form in the new Act which provides for an application for extension of time, i.e., Old Act – Form CM 17 (Application for extension of time), which was previously used for late lodgement of CM documentation; postponement of AGM's; issue of share certificates etc. Regulation 166 (2) however provides that extensions of time may be granted upon application to the Companies Tribunal at CIPC, namely submission of **Form CTR 142, accompanied by an affidavit** signed by all directors of the company; and their recent certified identifiable copies of their RSA ID's.

ANNUAL RETURNS (Section 33 and Regulation 30)

All entities are required to file an Annual Return each year within 30 business days of its date of incorporation (i.e., anniversary date) (Domesticated entities – within 30 business days of its date of registration or incorporation in RSA) (External entities – within 30 business days of its date of registration or incorporation as an External Company in RSA)

Fees payable :-

Turnover less than R1 m

R100 CIPC filing fee (R150 if not lodged timeously)

Turnover R1m but less than R10 m

R450 CIPC filing fee (R600 if not lodged timeously)

Turnover R10m but less than R25m

R2 000 CIPC filing fee (R2 500 if not lodged timeously)

Turnover in excess of R25 m

R3 000 CIPC filing fee (R4000 if not lodged timeously)

Procedure to be followed when lodging an Annual Return

- Ensure that there are sufficient funds in your agent account to cover both the filing fee and penalty (if applicable).
- Submit the return electronically via the CIPC website. Kindly note that the new Act has provided for Forms CoR 30.1 (or Form CoR 30.3 in the case of an External Company), however these forms are not being utilised and cannot be submitted manually).

accompanied by:-

- recent certified identifiable copies of the RSA ID's of all of the directors and company secretary and public interest score calculation (not compulsory).
- latest audited annual financial statements (compulsory for all entities which require to be audited in terms of the PI score). *Note: The financials must be sent to financialstatements@cipc.co.za on the same day the annual return is lodged.

Kindly note that all other entities are exempted from submitting their AFS, but must submit a Financial Accountability Supplement (with reference to Form CoR 30.2)

ANNUAL RETURNS (Section 33 and Regulation 30) (cont/d)

Notes:

- i) If whilst attending to the electronic submission of an entity's annual return, it is noted that the information indicated on the Companies Registry differs from the entity's records, the applicable CoR Form required to rectify the information is to be electronically submitted with CIPC.
- ii) Section 30(8) of Companies Act 2008 allows for dormant entities to apply to the Commission for exemption from having to pay/lodge annual returns however the entities must provide proof thereof via financial statements.
- iii) Effective 1 July 2024, Annual Return submission must be accompanied by beneficial ownership submission.

CIPC NOTICE NO: [53 OF 2025](#)

DATE OF ISSUE : 04/12/2025

CIPC CALLS ON COMPANIES TO COMPLETE THE COMPLIANCE CHECKLIST ACCURATELY

Dear Valued Customer,

The Companies and Intellectual Property Commission (CIPC) notes with concern the trend of false and misleading submissions on the Compliance Checklist and reiterates that knowingly providing false information to the CIPC constitutes an offence under Section 215 of the Companies Act, 71 of 2008 (“the Act”).

The CIPC has a statutory responsibility in terms of section 187(2)(b) of the Act to monitor proper compliance with the Act. Towards achieving this mandate, the CIPC developed, tested and formally implemented in 2020 an Electronic Compliance Checklist Service on its E – Services.

The Compliance Checklist is a vital governance tool that enhances oversight and accountability in corporate South Africa. Further, it functions as a declaration by company directors and officers of the company’s compliance status and accuracy of information submitted to the CIPC.

Through the Compliance Checklist, the Corporate Governance, Surveillance and Enforcement Unit (CGSE) has been monitoring the compliance of various entities and initiating complaints (Proactive cases) in terms of Section 168(2) of the Act, which empowers the Commission to act on its own initiative in instances of suspected non-compliance.

The compliance checklist comprises 24 questions, each requiring a considered response of “Yes,” “No,” or “Not Applicable,” along with supporting comments. These questions cover key compliance requirements under the Companies Act and relevant regulations.

To illustrate:

Question 9 asks the filer whether the company has complied with Section 33 (which requires, among others, that the company must file annual returns within 30 business days of anniversary of business) when filing the Annual Returns for that Compliance Year. Most companies (filers) indicated compliance (“Yes”), yet the CIPC’s records show that annual returns for previous compliance year(s) were filed significantly later than the statutory deadline of 30 days post the company’s anniversary.

Question 17 asks the company if they complied with Section 71 which relates to Removal of Directors. The checklist reflects “Yes” for compliance with director removals. However, CIPC records reveal that there was no director removals occurred during the compliance period.

Schedule 1 deals with provisions that are concerning Non-Profit Companies. In question 24, the different companies again would select “Yes”, despite being a State-Owned Company (SOC), Private Companies, or Personal Liabilities to which Schedule 1 does not apply.

These are but a few examples demonstrating a broader trend of inaccurate or careless reporting. Such conduct undermines the integrity of the compliance monitoring process. The CIPC wishes to underscore the critical role that company secretaries and directors play in ensuring compliance with the Companies Act.

The accuracy of compliance submissions is not a mere formality but a statutory duty that contributes to corporate transparency and good governance. All company officers are reminded of their responsibilities and the legal consequences of failing to uphold them.

The CIPC will continue to exercise its mandate in monitoring and enforcing compliance and will not hesitate to act where there is evidence of misconduct or non-compliance.

The CIPC is available to support companies in areas that require intervention and to engage with external stakeholders, as part of strengthening compliance. The Compliance Checklist can be accessed by logging on to the CIPC's e-Services, Clicking on the Other/More Services icon, Business Maintenance and then on the Compliance Checklist Link.

[Notice 53 of 2025](#)



Companies and Intellectual
Property Commission

a member of **the dti** group

COMPLIANCE CHECKLIST



WHY THE COMPLIANCE CHECKLIST

To ensure compliance of the mandatory requirements of the Companies Act such as described in section 15, - requiring every company to have a MOI.

Serves as an educational tool for directors and company secretaries, in guiding them with regards to their responsibilities in terms of the Companies Act.

CIPC will utilise the Checklist to monitor and regulate proper compliance with the Companies Act and if trends of non compliance appear, to act accordingly.

ONLY APPLICABLE TO THE FOLLOWING CATEGORIES OF COMPANIES

Incorporated – Inc. (21)
Proprietary Limited – (Pty) Ltd (07)
Limited – Ltd (06)
State owned company – SOC (30)
Non Profit Company – NPC (08)

SCREEN SHOTS OF WHAT THE COMPLIANCE CHECKLIST LOOKS LIKE

You are here: CIPC » Services » Compliance » Checklist

TERMS AND CONDITIONS.

- (1) Section 215(2) (e) of the Companies Act – A person commits an offence who knowingly provides false information to the CIPC.
- (2) Section 216 (b) – Any person convicted of an offence in terms of the Companies Act is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.
- (3) Compliance with these minimum specific sections does not constitute permission not to comply with the entire Companies Act/ Schedules and Regulations.

ENFORCEMENT COMPLIANCE CHECKLIST

Enterprise Number

VALIDATE



TERMS AND CONDITIONS.

- (1) Section 215(2) (e) of the Companies Act – A person commits an offence who knowingly provides false information to the CIPC.
- (2) Section 216 (b) – Any person convicted of an offence in terms of the Companies Act is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.
- (3) Compliance with these minimum specific sections does not constitute permission not to comply with the entire Companies Act/ Schedules and Regulations.

ENFORCEMENT COMPLIANCE CHECKLIST

Enterprise Number

* * *

VALIDATE



Enterprise Details

Enterprise Number	2004 / <input type="text" value=""/>
Enterprise Name	<input type="text" value=""/>
Enterprise Type	Private Company
Enterprise Status	In Business
Registration Date	2004-05-03

CONTINUE



Enforcement Compliance Checklist

[Click here to download PDF of relevant section, regulation and schedule](#)

Compliance Year

Registration number of entity

Name of entity

Did the company comply with section 4 during the previous calendar year?*

Yes No N/A

Did the company comply with section 15 during the previous calendar year?*

Yes No N/A

Did the company comply with section 26 during the previous calendar year?*

Yes No N/A

Did the company comply with section 27 during the previous calendar year?*

Yes No N/A

Did the company comply with section 28 during the previous calendar year?*

Yes No N/A

Did the company comply with section 29 during the previous calendar year?*

Yes No N/A

Did the company comply with section 30 during the previous calendar year?*

Yes No N/A

Did the company comply with section 32 during the previous calendar year?*

Yes No N/A

Did the company comply with section 33 during the previous calendar year?*

Yes No N/A

Did the company comply with section 44 during the previous calendar year?*

Yes No N/A

Did the company comply with section 45 during the previous calendar year?*

Yes No N/A

Did the company comply with section 50 during the previous calendar year?*

Yes No N/A

Did the company comply with section 61 during the previous calendar year?*

Yes No N/A

Did the company comply with section 66 during the previous calendar year?*

Yes No N/A

Did the company comply with section 69 during the previous calendar year?*

Yes No N/A

Did the company comply with section 70 during the previous calendar year?*

Yes No N/A

Did the company comply with section 71 during the previous calendar year?*

Yes No N/A

Did the company comply with section 86 during the previous calendar year?*

Yes No N/A

Did the company comply with section 90 during the previous calendar year?*

Yes No N/A

Did the company comply with section 92 during the previous calendar year?*

Yes No N/A

Did the company comply with section 94 during the previous calendar year?*

Yes No N/A

Did the company comply with regulation 21 during the previous calendar year?*

Yes No N/A

Did the company comply with regulation 43 during the previous calendar year?*

Yes No N/A

Did the company comply with schedule 1 during the previous calendar year?*

Yes No N/A

You are here: CIPC eServices » Checklist » Checklist

COMPLIANCE CHECKLIST FILED!

Compliance Checklist for the enterprise with enterprise number [REDACTED] has been filed.

LOGOUT



HOW TO RECTIFY INCORRECT INFORMATION SUBMITTED

If incorrect information is submitted send an email to COR135.1complaints@cipc.co.za to explain why incorrect information was submitted and why it should be rectified and CIPC will make a determination.

IF CLARIFICATION IS REQUIRED

For any questions or specific points of clarification on the Compliance Checklist send email to COR135.1complaints@cipc.co.za



Companies and Intellectual
Property Commission

a member of **the dti** group



THANK YOU

The dti Campus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria, P O Box 429, Pretoria, 0001

Tel: +27 12 394 5423 | Fax: +27 12 394 6423 | Call Centre: 086 100 2472

Email: LLelejane@cipc.co.za | Website: www.cipc.co.za



CIPC



@theCIPC



CIPC Companies and Intellectual
Property Commission

SECTION 9

BUSINESS RESCUE/DISSOLUTION OF COMPANIES (INCLUDING DEREGISTRATION/WINDING UP (LIQUIDATION)/RESTORATION AND RECONSTRUCTION OF ENTITIES (PART 6 OF CHAPTER 2 AND CHAPTER 6)

Trading Recklessly (Section 22(1))

A company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

Forms issued by CIPC in this regard (Section 22(2) and Regulation 19)

Form CoR 19.1 Notice to show cause regarding reckless trading or trading under insolvent circumstances.

Form CoR 19.2 Confirmation notice

Duty to notify if a company is in financial distress (Section 129(7))

Financial distress is defined as being reasonably unlikely that the company will be in a position to pay all of its debts as they become due and payable within the immediate ensuing 6 months, or reasonably likely that the company will become insolvent within the immediate ensuing 6 months.

(New Act inclusion: Sections 128 and 129, if a company is in financial distress as defined in the New Act, and the Board of directors has not adopted a resolution to this effect, it is the duty of each of the directors, and the Board as a whole, to notify affected persons if a company is in financial distress and the reasons for not having adopted a resolution to this effect.

It replaces Judicial Administration of failing companies in terms of the Old Act. It facilitates the rehabilitation of a company that is financially distressed. This regime is largely administered by the company itself, under temporary independent supervision of a qualified Business Rescue Practitioner (member of Legal, Accounting or Business Management Professions) as accredited by CIPC. This is within constraints as set out in the New Act and subject to Court intervention at any time on application by any of the stakeholders.

The interests of stakeholders in general (shareholders, creditors and employees) is recognised. The New Act provides for their participation and approval of the development of the business rescue plan.

Employees interests are protected by:-

- their recognition as creditors with a voting interest to the extent of any unpaid remuneration before the commencement of the business rescue process;

BUSINESS RESCUE (Chapter 6) (cont/d)

- their consultation is required in the development of the business rescue plan to assist in the rescue of the company by restructuring its affairs in a manner that maximises the likelihood of the continued existence on a solvent basis;
- exercising their right to address creditors prior to voting on the business rescue plan;
- giving them, as a group, the right to buy out any un-co-operative creditor or shareholder who has voted against the implementation of the business rescue plan.

In order to qualify for the Business Rescue process, no liquidation proceedings must have commenced against the company.

Procedure to be followed :-

- The Board of Directors may pass a resolution believing, on reasonable grounds, that the company is financially distressed and that there appears to be a reasonable prospect of rescuing the company, i.e., to voluntarily commence with Business Rescue proceedings (Section 129) Resolution to be filed with CIPC; or alternatively
- an affected person (creditor; shareholder; employee or organised labour) may apply to the Court for a court order for the company to commence with Business Rescue proceedings;
- Within 5 business days of passing the abovementioned resolution or upon the company receiving a court order to this effect, a Form CoR 123.1, Notice of Beginning of Business Rescue Proceedings must be filed with CIPC;
- Within 2 business days (or within 5 business days after receipt of a court order) the Board must appoint a Business Rescue Practitioner and publish a notice to this effect, a Form CoR123.2 Notice of Appointment of Business Rescue Practitioner must be filed with CIPC. Once appointed, the directors of the company can only act by authority of the Business Rescue Practitioner. All affected parties are to be informed of this appointment.

Note:

- The Board decision may be challenged.
- If the Board fails to follow the abovementioned prescribed procedure timeously, it cannot again adopt a similar resolution within 3 months, unless the court grants it an order.

Finalisation of Business Rescue Proceedings:

- Upon a court order to set aside the resolution or order that began the Business Rescue proceedings or converts the Business Rescue proceedings into liquidation (Section 81) (Form CoR 125.2); or if the Business Rescue Plan has been rejected; or the Business Rescue practitioner has filed a substantial implementation of the plan (Form CoR 125.3)

BUSINESS RESCUE (Chapter 6) (cont/d)

If after an expiry period of 3 months after the implementation of the Business Rescue Plan the proceedings have not ended, or for such longer period as prescribed by the Court, on application of the Business Rescue Practitioner, the Practitioner must prepare a report on the progress thereof (updated at the end of each month until such time as it is finalised) and deliver the report and all updates in the prescribed manner (Form CoR 125.1) to all affected parties or the court (if it is subject to a court order) or to CIPC in any other case.

Business Rescue Procedure is controversial in that:-

- no court overview is allowed whilst Business Rescue proceedings are underway, however the decision may be challenged thereafter.
- there are far reaching consequences –
 - especially for lenders in that no guarantee or surety by a company may be enforced without the consent of the court;
 - general moratorium on legal proceedings against the company (including interdicts) except in exceptional cases;
 - temporary moratorium on the rights of claimants against the company or in respect of property in its possession;
 - suspension of time limits and prescription.

Note:

In terms of the Companies Act, subject to Section 136(2A), and despite any provision of an agreement to the contrary, during business rescue proceedings, the practitioner may :-

- entirely, partially or conditionally suspend (**NOT CANCEL** in terms of Section 136(2)) for the duration of the business rescue proceedings any obligation of the company that:-
 - arises under an agreement (excluding agreements of employment OR any agreement to which Sections 35A or 35B of the Insolvency Act 1936 applies) to which the company was a party at the commencement of the business rescue proceedings; and
 - would otherwise become due during those proceedings or
 - apply urgently to a **COURT to entirely partially or conditionally CANCEL on** any terms that are just and reasonable in the circumstances, any agreement to which the company is a party (excluding agreements of employment OR any agreement to which Sections 35A or 35B of the Insolvency Act 1936 applies)

RESCUING BUSINESS RESCUE

There are successes, like Edgars and Murray & Roberts, but also nightmares like the eight-year rescue of Basil Read. So is it working?



Rob Rose



Ruby Delahunt

July 7, 2025

9 mins read



Business Rescue needs rescue. This is the sentiment of many whose lives have been turned upside down by this innovation designed to save companies from collapse.

In the decade since business rescue first entered South Africa's corporate lexicon, thousands of businesses have gone under the knife in the hope they could be saved.

Some succeeded, like Edcon and South African Airways; others, like Comair, failed. A whole batch more, like Tongaat Hulett and Group Five are still mired in the process. This is ominous for firms like Murray & Roberts and Daybreak Foods, now in the process.

Glenn Orsmond, the former CEO of the now-defunct Comair, has a damning view of the practice.

In his book *Crash and Burn – A CEO's Crazy Adventures in the Airline Industry*, Orsmond pulls no punches. The airline went into business rescue in May 2020, but it stumbled along for two years in that process, until it spluttered into liquidation two years later.

Comair had been decimated by Covid, but it had already been facing other problems by the time the pandemic arrived: rocketing costs, a bloated workforce, dismal crew utilisation, and a nightmare \$45m dispute over nine aircraft it bought from Boeing.

Orsmond said the business rescue practitioners and the management cobbled together a rescue plan “without any buy-in from stakeholders” such as the creditors, employees, banks, and shareholders. The rescue process was expensive and rushed, he said.

If anything, it was the bankers who benefitted most.

“The Comair rescue deal would not have happened without bank support, but in return the banks extracted more than their fair pound of flesh,” Orsmond writes. “Exorbitant debt-structuring fees were extracted, interest rates were fixed at loan-shark levels, and they demanded more than their fair share of Comair equity as an added sweetener.”

Orsmond’s view aligns with critics who say business rescue practitioners often come in to oversee a business they have no understanding of. Nor do they, and their advisors, hesitate in levying chunky fees – grudge spending for a company already on its knees.

He describes how a large team of lawyers ate away at Comair’s rescue budget. While the two business rescue practitioners charged the approved tariffs, Orsmond says that between the airline’s lawyers, the shareholder’s lawyers, and the business rescue practitioners, fees amounted to R75m.

To hear critics who’ve been scalded by business rescue speak, the issue of fees comes up repeatedly. No one wants to put more money in; everyone wants something out.

It’s a casual assumption that infuriates Siviwe Dongwana, a practitioner who has worked in a number of high-profile rescues such as that of South African Airways.

“When people complain about the fees charged by business rescue practitioners, these are usually irresponsible and uninformed comments,” says Dongwana.

He should know: at SAA, he and his fellow business rescue practitioner Les Matuson were attacked on this issue by none other than former public enterprises minister, the late Pravin Gordhan, who accused them of milking R36m in the first year of rescue.

Gordhan took issue not just with their fees, but those of the advisors: auditors PricewaterhouseCoopers were paid R25m for advisory services, law firm ENSafrica got R12.1m for legal advice, and US aviation consultants Alvarez & Marsal was paid R35m.

But Dongwana and Matuson defended their fees in a letter to creditors, saying the amounts spent were “not outside the norm,” and a complex turnaround of an airline like this required a “supporting team of highly skilled professionals.”

They argued that this work had led to SAA reducing its costs by R500m per month, from R2.5bn to R2bn – but more to the point, they had kept the airline in the air, rather than in the hangar.

In the end, SAA spent nearly 18-months in rescue, from December 2019 to April 2021 — which cost the government R15bn in funding – but today, it is back in the skies, slimmer and with better odds of being sustainable. About R34bn in compromised debt has been wiped off its balance sheet.

Dongwana says shareholders in companies will typically agree to blow millions on corporate advisors, yet haggle over R25,000 a day when a company is in business rescue, when so much more rides on the operation restructuring, obtaining financing, and the strategy being correct.

When it comes to fees, the reality is that some practitioners get far more. While the law limits practitioners to a maximum of R25,000 a day, this hasn't been adjusted for inflation in years, so typically practitioners "negotiate" a higher fee with creditors.

"People generally have no idea what they're talking about when it comes to business rescue. The fees, for one thing, are disclosed, tabled, and approved by way of a vote by all the creditors of a company. So if everyone is unhappy about this, how would this get passed?"

Years on the shelf

But it's not just high fees; in some cases, the problem is that companies spend *years* in business rescue – while the company's cash slowly erodes.

The Companies and Intellectual Property Commission (CIPC) has warned with concern that many entities remain in business rescue for years without even adopting a plan.

Basil Read, once one of South Africa's nameplate construction firms, is the most obvious case. First placed under business rescue in 2018, having made a net loss for R1bn the previous year, it is now in its seventh year of business rescue.

Damningly, there have been 46 "business rescue updates" – and, incredibly, still no resolution.

The last such update blames the fact that money owed to Basil Read has been "withheld," as well as an inability to sell assets to raise cash.

"Notwithstanding market challenges, we, however, remain optimistic and continue to market these assets," the report says. "It remains the opinion of the practitioner that a full implementation of the plan will achieve a better result than a liquidation."

Dongwana, as luck would have it, is also one of the business rescue practitioners for Basil Read. He concedes it has taken very long but says there are reasons for it.

"First, the company had to conclude a number of the construction projects and there were the normal delays associated with closing down projects of that scale," he tells Currency. "Second, the plan had contemplated the sale of subsidiaries, which [then] failed [so] we undertook a sale of all the underlying assets and repaid the post-commencement finance and interest."

Yet Khathutshelo "K2" Mapasa, who was CEO of the Basil Read Group from 2017 until 2023, which includes five years of business rescue, has another view.

He admits that delays in construction projects ultimately felled the company, and even though it then got a bridging loan and debt standstill, its management didn't give themselves enough runway to trade out of distress.

But Mapasa argues that part of the problem with business rescue is that the practitioners are often not business people at all, but are accountants, lawyers or "people who work in banks."

There are no explicit requirements for qualifications to be a practitioner, so the industry has been swarmed by liquidators, lawyers, and accountants all jostling for business. The problem is, they often have little to zero knowledge of the particular sector.

Mapasa says this is why it's critical that the company's management work closely with them in drawing up a business rescue plan. "If there's no collaboration, you might as well just put the company in liquidation," he argues.

In Basil Read's case, Mapasa says he ended up having to negotiate with the firms unwilling to pay the builder.

Nonetheless, and controversially if you're a Basil Read shareholder, Mapasa still considers the business rescue to be a success. "Rescue success for the lenders, doesn't mean the business necessarily has to come back," he says.

It's bizarre, but true. The business rescue act has two definitions of a 'successful' rescue operation – one that brings the business back to life as a trading entity, and one that winds down the company and pays out their creditors.

The idea was always to wind down Basil Read in a way that bank guarantees weren't called, while allowing its projects to be passed onto other companies. But the real fly in this ointment is that the business rescue process has still not been wrapped up.

"The system is being gamed" says Mapasa on this point. Cynically, he adds that the business practitioners are "accountants who need to maximise their returns."

A success story

It seems you can't throw a rock without hitting some executive who has a lot to say about the failures of business rescue. But, occasionally, you'll find the posterchild for what business rescue *could* look like, if done well.

Take Edcon, the one-time credit retailing behemoth of South Africa that was placed under rescue in April 2020. Within six months, the practitioners had wrangled a deal to sell 120 Edgars stores to the Durban-based clothing retailer Retailability for "an undisclosed amount". Though 65 of the loss-making stores closed, this deal saved 5,200 jobs and kept the Edgars flag flying.

The rescue was done by Piers Marsden and Lance Schapiro, who capped their success by also then selling Edcon's Jet business to rival retailer TFG for R480m, saving 371 stores and 4,800 jobs in the process.

Grant Pattison, the CEO of Edcon at the time of its collapse, tells Currency that the business rescue of the group was just about "perfect."

Pattison had taken the CEO role two years before it hit the wall – a process accelerated by the Covid lockdown. He says the holding company "was rotten" with terrible contracts, too much debt, too many employees and too little remaining talent.

"And these poor little companies sitting in the middle of them – Edgar's and Jet – were absolutely fine."

This was a moment for business rescue to shine: the best operations were sold quickly, and the stock was sold for cash, which was used to repay creditors. It was "a mechanism for the good bits of a bad business to survive."

The rescue of Murray & Roberts, handled by Peter van den Steen, Joshua Cunliffe, and Denis Chifunyise, has arguably been just as successful. Placed in rescue in November, its largest arm – the mining business – was sold to Differential Capital in April.

Here, unsecured creditors get 5c-10c for every rand they are owed, better than the 0c-1c they would have got under liquidation, while 2,800 jobs were saved.

Pattison says the ingredients for a successful rescue are a decent board that does not duck responsibility, as well as a competent and ethical business rescue practitioner.

“It is unfortunately a position of power that can be abused,” he says. “Get the wrong person in there, and they can manipulate the situation to maximise their own fees.”

Worryingly, if you happen to get a bad practitioner, Pattison says there are few ways to prevent them from doing precisely that.

The good, the bad, and the ugly

The question remains: does business rescue even work? And if it doesn't, why pay extra in fees if it's going to make no difference?

Evidence is hard to come by. As University of South Africa academic Frank Matenda, writes: “in practice, the problem of what institutes a successful business rescue remains topical but unsolved in South Africa. There are limited research efforts on the identification and ranking of business rescue success pointers.”

One way to assess this is to compare trends in liquidations – and here the number of companies being wound up has been steadily decreasing over the past six years, even though South Africa's economy has still struggled to breach 1% GDP growth.

This suggests business rescue *is* having a positive effect. Nonetheless, there were still 1,500 liquidations last year, which also implies that if rescue works, it should be happening far more often.

Closer to the source, figures provided in 2022 by CIPC showed that over the decade since the inception of business rescue, about 4,370 companies entered rescue. Of those, 1,649 were still active, with 546 ultimately liquidated.

The good news is that the CIPC numbers suggest about half the number of rescues succeeded; the bad news is, we have no knowledge on *why* these worked.

“Some people make this throwaway assumption that business rescue doesn't work, but I don't think the evidence is there to say that,” says Dongwana. “It's true that some don't work, and often, this is because those companies are being put into business rescue too late, when it's a lost cause already.”

Dongwana argues that to make a real assessment of business rescue – its strengths and weaknesses – the information gap has to be closed.

“People simply don't have the evidence either way to say ‘business rescue doesn't work’ or ‘these fees are too high.’ We need better information to close the expectation gap of what business rescue can genuinely deliver,” he says.

Better information will also highlight the exceptions that give the rest of the industry a bad name – like the endless rescues that only seem to enrich the lawyers.

In the case involving Shiva Uranium – a company once owned by the Guptas – it took 30 months to even finalise the appointment of practitioners, for example.

That seems about as ludicrous as the never-ending Basil Read process, where you'd probably have better luck rescuing aviator Amelia Earhart. But The imperative to fix this is clear, given the value that successful rescues have brought to South Africa.

As Dongwana puts it: "If one company like Edcon can save thousands of jobs, can you genuinely say that business rescue *isn't* working? I don't think so."

DISSOLUTION OF ENTITIES

DEREGISTRATION (Section 82 and 83)

Considerations:-

Dormant Company

From an audit point of view if the company is dormant, dormant financial statements would have to be prepared, all assets and liabilities would have to be dealt with, the bank account closed, all taxes due paid, dormant returns lodged with SARS (on an annual basis) and the company's bank statement would be cleared out except for cash in bank = issued share capital.

Trading Company

With regard to the dissolution of the company, from an audit point of view if the company is operational, financial statements would have to be drawn up at either the financial year end or at the time of the proposed dissolution, dividends would have to be declared, all withholding taxes would have to be paid within 1 month of declaring any dividends, all tax returns brought up to date, the bank account would be closed and the company's bank statement would be cleared out except for cash in bank = issued share capital. Any assets and/or liabilities would also have to be dealt with prior to the dissolution.

From a secretarial point of view, in terms of the Old Act, once the above steps have been put in place, a statement requesting the deregistration of the company together with a resolution of the directors had to be prepared. These documents required the signature of all current directors of the company. A statement by the company's auditors indicating that the company is dormant, has no intention of trading in the future, has no assets or liabilities save for its share capital had to accompany the lodgement of the deregistration application with CIPRO. The deregistration process would then take anything from between 6 to 18 months (or longer) to complete as the Registrar of Companies would have to first approach other Government Departments (SARS, UIF, PAYE, WCA, VAT etc) to ensure that there are no outstanding issues and then grant final approval of deregistration.

In addition to Section 82(1) and 82(2) of the New Act, CIPC may otherwise remove a company from the CIPC register only if (Section 82(3) :-

- (a) the company
 - (i) has failed to submit an annual return for two or more years in succession and
 - (ii) on demand by CIPC (Form CoR 40.3), has failed
 - (aa) to give satisfactory reasons for the failure to file the required return or
 - (bb) show satisfactory cause for the company to remain registered or
- (b) CIPC issues a Notice of Pending Deregistration (Form CoR 40.4)

Sections 82(3) and 83(3) and Regulations 40(2) and 40(3) If CIPC

- (i) has determined in the prescribed manner that the company appears to have been inactive for at least 7 years and no person has demonstrated a reasonable interest in or reason for its continued existence or
- (ii) has received a request in the prescribed manner and form and has determined that:
 - (aa) the company has ceased to carry on business; and
 - (bb) has no assets or because of the inadequacy of its assets, there is no reasonable probability of the company being liquidated.
- c) Section 82(5) has determined a company may make an application to transfer its registration to a jurisdiction outside of the Republic (Form CoR 40.2) accompanied by a special resolution of the shareholder, satisfactory evidence that the company satisfies the transfer to register in that jurisdiction and upon the payment of the applicable filing fees to CIPC.

Note: In the instance where a deregistration application is to be withdrawn, a letter on the entity's letterhead, addressed to CIPC stating the reasons for the withdrawal of the deregistration application is to be filed with CIPC, together with a certified copy of the ID of the MD.

Deregistration application procedure:-

- **Prepare a resolution and statement of the directors on the company letterhead, signed by all of the directors (as per example) and submit to CIPC, together with:-**
- **A valid Tax clearance certificate from SARS**
- **Recent certified identifiable RSA ID's of all directors.**

The above documents must be emailed to deregistrations@cipc.co.za in order for CIPC to process the deregistration.

NB: Deregistrations of Close Corporations

Section 26 of the Close Corporation Act has been substituted by Sections 81(1)(f); 81(3) 82(3) to 82(4) and 83 of the New Companies Act.

The same procedure for a close corporation is to be followed for the deregistration of companies as detailed above.

NB: Deregistrations of External Companies

It is recommended that an External Company applies for voluntary liquidation rather than applying for the deregistration of the local branch as a liquidation is final, whereas a deregistered entity can be resurrected.

NB: Once the entity has been de-registered, advise SARS (PAYE; VAT; SDL and income tax); WCA and UIF departments that the entity has been de-registered.

**EXAMPLE OF A DEREGISTRATION APPLICATION FOR A DORMANT COMPANY
ON A COMPANY LETTERHEAD**

XX PROPRIETARY LIMITED
REGISTRATION NO
INCOME TAX NO.

APPLICATION FOR DEREGISTRATION

We, the undersigned, being the directors of the Company declare that the Company:

1. Has ceased to carry on business;
2. Has no assets or liabilities;
3. Is completely dormant.

In terms of Section 82(3)(i)(ii) of the Companies Act, 2008, we hereby request CIPC to remove the name of the Company from the register of companies and that the memorandum and articles of association/(MOI) be cancelled.

ALL DIRECTORS TO SIGN.

ON COMPANY LETTERHEAD

XX PROPRIETARY LIMITED
REGISTRATION NO
INCOME TAX NO. _____

RESOLUTION PASSED BY THE DIRECTORS ON _____

RESOLVED

THAT since the Company has not carried on business during the current year and does not intend carrying on business in the future, CIPC be and is hereby requested to strike the Company from the register in terms of Section 82 of the Companies Act 2008, as amended.

RESOLVED FURTHER

THAT Mr XXXXXXX be and is hereby authorised to sign all documents and take such steps as are necessary to have the Company deleted from the register of companies.

ALL DIRECTORS TO SIGN

CIPC NOTICE NO: [57 of 2025](#)

DATE OF ISSUE : 05/12/2025

AUTOMATION OF COMPANY AND CLOSE CORPORATION VOLUNTARY DEREGISTRATION

Dear customers

The Companies and Intellectual Property Commission (CIPC) remain committed to delivering efficient, customer-focused services and streamlining the submission and filing of company-related applications. In line with this commitment, we are pleased to announce the automation of the Company and Close Corporation Voluntary Deregistration service on various CIPC electronic platforms, effective 8 December 2025.

From this date forward, all voluntary deregistrations applications must be submitted electronically via any of the authorised platforms. The dedicated email address previously used for such submissions (deregistrations@cipc.co.za) will no longer accept such documents from the indicated date.

Transitional arrangements

Applications submitted prior to 8 December 2025 will continue to be processed through the existing legacy system. Customers are advised not to submit a new application via the available online platforms if a previous voluntary deregistration application is still pending, as this may result duplication of applications and data. The application will be blocked on the online platforms if the company or close corporation has an in deregistration or final deregistration status.

To confirm the status of your submitted voluntary deregistration application, visit www.bizportal.gov.za / BizProfile to confirm the status.

- In Deregistration will reflect if the application has been processed to commence the voluntary deregistration process.
- Final Deregistration will reflect if the voluntary deregistration process has been finalised.

There will be no migration or transitioning of the voluntary deregistration application and the process under the existing system to the online version.

Therefore, companies and close corporation already in voluntary deregistration prior to the release of the new system will be finalised under the existing system – not the new automated version.

Automated Voluntary Deregistration service

The new automated service enables users to electronically capture the required letter information with an asset and liability checklist to commence the voluntary deregistration. To confirm that it is a company or close corporation decision, 50% of active directors or members must confirm the application via OTP on the online platform.

The service also makes provision for an enhanced objection process for those objecting to the final deregistration. The objection may be submitted by any person or third party to the company or close corporation, with a clear reason and evidence to support the reason. The objection will

be evaluated by the back-office team. If the objection is to be found to be valid, the status will be changed back to in business.

This automated service has further incorporated increased notifications to the filer, directors and members, and impacted stakeholders. The relevant deregistration notifications (form CoR40.4D) will be issued electronically via email to active directors and members for objection to the electronic contact details as CIPC's records. It is important to ensure that CIPC has the correct electronic contact details of directors and members – not their service providers or other third parties.

This automated service will have the customer impact that the processing of the voluntary deregistration process will be immediate, but the completion of the deregistration process will be reduced significantly from 4 months to a period of approximately 2 months. This waiting period is to allow sufficient time for objections to the process. The deregistration will only be finalised, if no successful objection has been received.

Legal provisions and conditions

This is a fully automated service to commence the voluntary deregistration process, and customers, directors and member are reminded that a final deregistration does not distinguish any outstanding liability or duty, but that they will continue to be liable in their personal capacity.

It is therefore advised that before the application is submitted that directors and members must ensure that they meet the requirements for deregistration, and that they have finalised, transferred or resolved all liabilities and assets. Section 83(2) of the Companies Act, 2008 is clear that removal of a company's (and a close corporation's) name from the companies' register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act, or omission that place before the company was removed from the register.

Directors of companies, which allows or supports the deregistration of a company may be in breach of his/her statutory and fiduciary duties as a director since he/she may not have acted in good faith and proper purpose, in the best interest of the company, and the degree of care, skill and diligence that is expected of a director and therefore, may be held personally liable in accordance with common law or in terms of the Companies Act for any loss, damage or costs sustained by the company itself or to others. (inter alia sections 76 and 77 of the Companies Act)

Members of close corporation, which allows or support the deregistration of a close corporation shall be held jointly and severally liable. (section 26(5) of the Close Corporations Act)

The person filing the voluntary deregistration of the company or close corporation will be required to confirm that he/she has the mandate from the company or close corporation to do so, and that the company or close corporation did assess its assets and liabilities before submitting. Customers are reminded that submitting false information to CIPC is a criminal offense under Section 214 of the Companies Act and may result in withdrawal of your application and criminal prosecution.

Any dispute between the directors or members that support the deregistration and the objector to the deregistration, must be resolved between themselves before resubmitting another voluntary deregistration. If the dispute cannot be resolved between the parties, the matter must

be referred to the Companies Tribunal and/or other forum provided especially in terms of the legislation to which the company was non-compliant. CIPC has no authority in terms of the Companies Act, to adjudicate over such matters.

In summary:

The service will be available on the following online platforms:

- BizPortal;
- E-Services; and
- Self Service Terminal

Before applying the following must be confirmed by the person who will be submitting the application:

- All liabilities and assets have been resolved especially with example SARS, relevant banks, Central Supplier Database,
- Director/member details are up to date and if not update via CoR39 or CK2,
- Ensure that 50% of active directors or members resolved to commence the voluntary deregistration, and
- Enterprise status on BizPortal.

Voluntary deregistration is a two-step process, namely:

- Commencement of the voluntary deregistration process and placing the company or close corporation into in deregistration; and
- If no successful objection is received, then final deregistration.

The deregistration notifications or letters will be available for download by the customer who submitted the application and/or the active directors or members free of charge for a period of 6 months after the final deregistration, thereafter it will be charged at R30. Third parties must request such information from Paper-Based Disclosure.

To support this transition, a step-by-step user guide and a list of frequently asked questions will be made available. Guidance notes (right side of screen) have been incorporated on the service for guidance as to what is required.

For further assistance, please visit www.cipc.co.za or refer to the enquiries section for guidance on submitting your queries.

[Notice 57 of 2025](#)

Changes to Voluntary Deregistration Notices

[Notice 41 of 2025](#)

The Companies and Intellectual Property Commission (CIPC) hereby inform all customers that, effective 11 August 2025, the CIPC will no longer dispatch voluntary deregistration notices via post.

This change applies to both:

- Form CoR40.4D – Notice of Investigation into the Deregistration, and
- Notice of Deregistration (Final Deregistration Letter).

These documents will now be issued exclusively via email to the contact details on the companies' registry for directors of companies and members of close corporations.

From this date, CIPC will continue with the voluntary deregistration for companies and close corporations who applied for voluntary deregistration and whose process for voluntary deregistration has not been completed due to this migration.

Please take note of the following important information:

• **Objection Period:** A period of four (4) months remains in place between the status “Deregistration Process” and “Final Deregistered” to allow for objections by directors, members, or other stakeholders to the deregistration. Due to the delay in processing caused by the migration to e-mail this process may be longer. The objection period between issuing of the CoR40.4D letter to final deregistration is a minimum period of 20 business days, which must be adhered to.

• **Submitting Objections:** Objections to voluntary deregistration must be submitted via email to deregistrations@cipc.co.za. The objection must be attached in PDF format.

• **Verification of Status:**

Business owners and customers are encouraged to verify the status of their company or close corporation via the BizPortal at www.bizportal.gov.za by navigating to: Login > Services > BizProfile.

• **Legal Validity:**

While the format and content of the letters may differ slightly due to the transition from physical to electronic communication, the legal effect remains unchanged. A company or close corporation is only considered legally deregistered once the status reflects as “Final Deregistered”.

Legacy System Notice:

Please note that the voluntary deregistration process remains a legacy system. As such, the applicant who submitted the deregistration request will not receive status updates via email. All progress must be monitored through BizProfile.

For further enquiries, please contact the CIPC through the appropriate channels.

Complaints regarding businesses operating during deregistration process or final deregistration

[Notice 36 of 2025](#)

It has come to the attention of the Companies and Intellectual Property Commission (CIPC) that a number of complaints have been lodged against entities that have been placed under Final AR Deregistration.

In terms of section 82 (3) of the Act, read together with regulation 40 of the Companies Regulation, the CIPC may de-register a company that failed to file its annual returns and remove such a company from the Companies Register. A company may also be placed under Final Deregistration upon filing a voluntary deregistration application with the CIPC.

Once a company is placed under Final AR Deregistration for failure to file annual returns, the legal consequences are that the company loses its juristic/legal personality, in that, it ceases to exist as a legal entity. The directors/shareholders of such a company may be held personally liable for any liabilities incurred during such a period.

It is important to point out that section 82(4) of the Act, read together with regulation 40(6) of the Companies Regulations does allow/permit for a company that has been placed under final AR deregistration for failure to file annual returns to be reinstated, if is able to provide sufficient information that at the time it was deregistered the company was in business or it has immovable property, and that all outstanding annual returns are filed. Furthermore, any affected party may apply to the court for an order to reinstate a deregistered company in terms of section 83(4) of the Act and upon receipt of such an order, file the same with the CIPC for implementation.

Unless a company has been reinstated, any person that enters into business with a company that has been deregistered may suffer financial losses, in that such a company can no longer litigate or be litigated against. Customers are urged to check the status of the entity on the CIPC's BizPortal system to verify if that company is still in business or not before entering into contracts/transactions with any company.

In addition to the above, the CIPC further urges all companies that are under Final AR deregistration to apply for reinstatement if they still wish to continue conducting business. Moreover, please be informed that the CIPC has now introduced the automation of the Application for Re-instatement of Deregistered Company (Form CoR40.5), on 11 August 2025. Therefore, applications to re-instate a company or close corporation must be submitted electronically via the e-Services, BizPortal and/or Self-Service Terminal platforms.

Kindly take note that the previously used dedicated email for re-instatement application is no longer operational. Reinstatement applications shall be processed through the automated system alluded to above.

WINDING UP (LIQUIDATION) (Sections 79: 80 and 81)

Winding up of Solvent Companies - Section 79

- (1) A solvent company may be dissolved by –
 - (a) voluntary winding up initiated by the company as contemplated in Section 80 and conducted either -
 - (i) by the company; or
 - (ii) the company's creditors, as determined by the resolution of the company; or
 - (b) winding-up and liquidation by court order (Section 81)
- (2) The procedures for winding up and liquidation of a solvent company whether voluntary or by court order are governed by this part and to the extent applicable by the laws referred to or contemplated in Item 9 of Schedule 5.
- (3) If at any time a company has adopted a resolution contemplated in Section 80 or after an application has been made in Court as contemplated in Section 81, it is determined that the company to be wound up is or may be insolvent, a Court, on application by any interested person, may order that the company be wound up as an insolvent company in terms of the laws referred to or contemplated in item 9 of Schedule 5.

Voluntary Winding up of Solvent Company (Section 80)

- (1) A solvent company may be wound up voluntarily if the company has adopted a Special Resolution to this effect. (refer to Section 4 of the course file).
 - (2) A special resolution providing for the voluntary winding up of a company must be filed with CIPC, together with a Form CoR 40.1 and the CIPC filing fee of R250
 - (3) If a resolution contemplated in this section provides for the winding up by the company before the resolution and notice are filed, the company must –
 - (a) arrange for security, satisfactory to the Master for the payment of the company's debts within no more than 12 months after the start of the winding up of the company; or
 - (b) obtain the consent of the Master to dispense with security which the Master may do only if the company has submitted to the Master –
 - (i) a sworn statement by the director, authorised by the Board of the Company stating that the company has no debts; and
 - (ii) the certificate by the company's auditor, or if it does not have an auditor a person who meets the requirements for an appointment as an auditor and appointed for the purpose stating, that to the best of the auditors' knowledge and belief, and according to the financial records of the company, the company appears to have no debts.
 - (4) any costs incurred in furnishing the security referred to in subsection 3 may be paid by the company.
 - (5) a liquidator appointed in a voluntary winding up may exercise all powers given by this Act, or a law contemplated in Item 9 of Schedule 5, to a liquidator in the winding up by the Court –
 - (a) without requiring specific order or sanction of the court; and
 - (b) subject to the directions given by –
 - (i) the shareholders of the company in a general meeting in the case of the winding up of a company by the company; or
 - (6) the creditors in the case of a winding up by creditors. A voluntary winding up of a
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company begins when the resolution of the company has been filed in terms of subsection (2)

- (7) When a resolution has been filed in terms of subsection (2), CIPC must promptly deliver a copy thereof to the Master.
- (8) Despite any provision to the contrary in a company's MOI –
 - (a) the company remains a juristic person and retains all of its powers as such whilst it is being wound up voluntarily; but
 - (b) from the beginning of the company's winding up –
 - (i) it must stop carrying on its business except to the extent required for the beneficial winding up of the company; and
 - (ii) all of the powers of the company's directors' cease, except to the extent specifically authorised –
 - (aa) in the case of a winding up by the company, by the liquidator or the shareholders in a general meeting; or
 - (bb) in the case of a winding up by creditors, the liquidator or the creditors.

Members' voluntary winding-up of Company with liabilities.

In a members voluntary winding-up with liabilities, the auditors sign a certificate confirming the liabilities and the directors sign an affidavit confirming the liabilities. A bank guarantee must be lodged with the Master of the High Court to the extent of the liabilities covering a period of twelve months.

Winding up of Insolvent Companies

Refer to Chapter 4 of Companies Act no. 61 of 1973 with regard to the requirements for the winding up of insolvent companies which is still applicable and not as yet repealed. Refer also to Item 9, Schedule 5 of New Act for further information in this regard. Not covered further on this course.

Winding up of solvent companies by Court Order (Section 81)

Not covered on this course.

Compromises (Section 155 (2))

Not covered on this course.

As soon as the liquidator has finalised the administration of the estate and receives the release from the Master of the High Court, the company is then dissolved and no longer in existence and cannot be re-instated.

LIQUIDATIONS CONSIDERATIONS CHECK LIST

Financial Statements of the company for the previous three years and up to date of liquidation i.e. (date liquidated) detailing assets and liabilities –

- Assets to be categorised and identified as to how to be realised in order to distribute cash or shares in specie to the shareholders;
- Liabilities to be determined, including South African Revenue Services (SARS), leases, contracts, retrenchment packages etc.
- Latest assessments in order to assess what is owing to SARS and clearances obtained.

Addresses of the directors of the company if no up-to-date register.

Addresses of shareholders if no up-to-date register.

Does the company have bank accounts at date of liquidation, if so, branch, type of accounts, account numbers, balance of monies in the bank?

Closure of bank accounts and/or how any overdrawn or cash in the bank as at date of liquidation will be dealt with.

Are any properties subject to un-cancelled contracts/lease agreements/contingent liabilities? If so, particulars and copies thereof.

Does the company have any insurance claims or commitments?

All tax numbers for the company i.e., vat, company tax, PAYE and tax offices at which registered, reconciliations thereof and copies of latest returns.

In the event the company has any creditors, names and addresses and amounts owing to the creditors.

Where are the books and records of the companies kept?

Are there any pending legal actions as at the date of liquidation by or against the company, if so, details.

Are there any telephone lines or accounts outstanding still to be cancelled?

Any funds due to Workmen's Compensation? If so, address, account number and date of last payment, together with latest reconciliations/return.

Any funds owing to the Department of Labour, Regional Service Council, Pension/ Provident Fund, Medical Aid, Trade Unions.

Any amount owing to any other statutory bodies.

LIQUIDATIONS CONSIDERATIONS CHECK LIST (CONT/D)

Breakdown of retained income per financial statements split prior to 31stMarch, 1993, and thereafter between trading and capital for the purpose of determining the Secondary Tax on Companies (STC) liability to SARS

Will there be any Capital Gains Tax attraction?

Confirmation of termination of the listing on the JSE, if applicable.

If numerous shareholders are involved, who are the Transfer Secretaries in order to set up distributions.

Will Reserve Bank approval be required?

EFFECTS OF REMOVAL OF COMPANY FROM REGISTER (SECTION 83):-

- (1) a company is dissolved as of the date its name is removed from the companies register.
- (2) the removal of the name of the companies register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register.
- (3) any liability as contemplated in subsection 2 above continues and may be enforced as if the company had not been removed from the register.
- (4) at any time after a company has been dissolved,
 - (a) the liquidator of the company or any other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and
 - (b) if the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken against the company had it not been dissolved.

RESTORATION OF ENTITIES (Old Act Section 82)

(Old Act – Restoration of an entity required High Court application).

Section 82(4)

Any interested party may make application to CIPC to re-instate a deregistered entity. If a reinstatement application is brought by any person, other than the company or close corporation or its duly appointed representative, then it is advisable to approach a court for an order of re-instatement. There is no cost to this application. Application to be made via email to corporatelegalservices@cipc.co.za.

In all other instances, and upon the filing of all outstanding annual returns by the company, close corporation or its duly appointed representative, an entity can be re-instated (or its legal personality restored) by the electronic online submission of a Form CoR 40.5 with CIPC (filing fee cost R200).

As this service has been automated w.e.f. 11 August 2025, the dedicated email address previously used for such submissions (re-instatements@cipc.co.za) will no longer be in operation.

Prior to 11 August 2025, the following additional documentation was required to accompany the application:-

- a recent certified identifiable copy of the applicant (director/member) and filing agent's RSA ID;
- An Affidavit (confirming reasons for the deregistration application where the entity itself applies for re-instatement and/or confirming why the annual returns were not filed if that was the reason for the deregistration;
- Documentary proof that the entity was in business at the time of the deregistration;

This evidence must however be retained by the company or close corporation, and CIPC reserves the right to request it at any time in accordance with Companies Regulation 168. Failure to provide such evidence may result in the withdrawal of the re-instatement application and subsequent Annual Return filings.

Once the application to re-instate has been processed and paid, the company or close corporation MUST file all outstanding Annual Returns, latest Beneficial Ownership Declarations and AFS/FAS within 30 business days to complete the re-instatement process failure of which the company or close corporation will be placed back into its previous deregistered status and the re-instatement application process must start again.

Verification of Status:

Business owners and customers are encouraged to verify the status of their company or close corporation via the BizPortal at www.bizportal.gov.za by navigating to: Login > Services > BizProfile.

Automation of application for re-instatement of deregistered company

Notice 35 of 2025

The Companies and Intellectual Property Commission (CIPC) remains committed to delivering efficient, customer focused services and streamlining the submission and filing of company-related applications. In line with this commitment, we are pleased to announce the automation of the Application for Re-instatement of Deregistered Company (Form CoR40.5) on 11 August 2025.

From this date forward, all applications to re-instate a company or close corporation must be submitted electronically. Only companies and close corporations which were in business at the time of deregistration may apply for reinstatement and directors and members, must keep such evidence.

The service will be available on the following platforms: –

- e-Services
- BizPortal
- Self Service Terminal

The dedicated email address previously used for such submissions (re-instatements@cipc.co.za) will, from 11 August 2025, no longer be in operation.

The new automated service enables users to electronically capture the required information. **This service will be a fully automated service with no need to upload supporting documents unless it is a court order. Please note that it remains essential for the company or close corporation to have been in business or had economic value at the time of final deregistration. This evidence must be retained by the company or close corporation, and CIPC reserves the right to request it at any time in accordance with Companies Regulation 168. Failure to provide such evidence may result in the withdrawal of the re-instatement application and subsequent Annual Return filings.**

It is important to note that submission alone does not constitute filing. An application will only be considered officially filed once payment has been successfully made via the CIPC card payment facility. The prescribed fee is R200.

CIPC will continue to process the applications received before such date. Customers may, even if they have an existing application pending, submit via the electronic platforms. Such applications will be rejected once back office reach the application when the status of the entity is checked. Customers must note that this check is a manual check and therefore, it may happen that it is erroneously processed and billed a second time and CIPC will not cancel the manual application or credit back the funds for such.

Once the application to re-instate has been processed and paid, the company or close corporation MUST file all outstanding Annual Returns, latest Beneficial Ownership Declarations and AFS/FAS within 30 business days to complete the re-instatement process failure of which the company or close corporation will be placed back into its previous deregistered status and the re-instatement application process must start again.

Important to note:

- Re-instatement court orders must be uploaded onto the service for back office to confirm the content and validate the court order and its content.
- The filing of a re-instatement court order is free of charge.
- Court orders are only processed once by the CIPC, and therefore once implemented the company or close corporation must still file all its outstanding Annual Returns, latest Beneficial Ownership Declaration and AFS/FAS. Since third parties do not have a mandate or the information, they are not mandated on law to file such information. If the outstanding Annual Returns, latest Beneficial Ownership Declaration and AFS/FAS is not filed, the company or close corporation will be placed back into AR deregistration for non-compliance with Annual Returns.
- When approaching the court for an order to re-instate, it is advised that the court order mandate the company to comply with such provisions within a set period.

Additional information required for application for re-instatement of deregistered company (form CoR40.5) via online platforms (w.e.f. 11 August 2025)

CIPC Practice note 3 of 2025

Practice Note 1 of 2022, is hereby withdrawn and replaced with this practice note as per the date communicated on the CIPC website for the release of the automation of Application for Re-instatement of Deregistered Company (Form CoR40.5) in terms of Regulation 4(2)(b) of the Companies Regulation, 2011.

This Practice Note is applicable to the re-instatement of companies and close corporations in terms of Section 82(4) of the Companies Act, 2008 read with Companies Regulation 40(6) and (7).

Re-instatement Applications:

CIPC will only re-instate companies and close corporations that were in business or had economic value at the time of final deregistration. Re-instatement of dormant, inactive or companies and close corporations that had no economic value at the time of final deregistration poses a risk to the integrity of the companies' registry and poses a risk of such entities being used for fraud, money laundering, terror financing or any other criminal activities.

This evidence must be retained by the company or close corporation, and CIPC reserves the right to request it at any time in accordance with Companies Regulation 168. Failure to provide such evidence may result in the withdrawal of the re-instatement application and subsequent annual return filings.

Once the application to re-instate has been processed and paid, the company or close corporation MUST file all outstanding Annual Returns, Beneficial Ownership Declarations and AFS/FAS within 30 business days to complete the re-instatement process; failure of which the company or close corporation will be placed back into its previous deregistered status and the re-instatement application process must start again.

Re-instatement Court Orders:

Re-instatement court orders must be uploaded onto the service for back office to confirm the content and validity of the court order, and it is free of charge. Court orders can only be implemented once by the CIPC, and therefore once implemented, the company or close corporation must still file all its outstanding Annual Returns, latest Beneficial Ownership Declaration and AFS/FAS.

Since third parties do not have a mandate or the information, they cannot file such on behalf of the company or close corporation re-instated by court order. If the outstanding Annual Returns, latest Beneficial Ownership Declaration and AFS/FAS is not filed, the company or close corporation will be placed back into AR deregistration for non-compliance with Annual Returns. When approaching the court for an order to re-instate, it is advised that the court order mandate the company to comply with such provisions within a set period of time.

For further assistance, please visit www.cipc.co.za and refer to the enquiries section for guidance on submitting your queries.

RECONSTRUCTION OF ENTITIES

Procedure

Obtain certified copies of entire file from CIPC – Go to www.cipc.co.za. Access Disclosure Forms on right hand side. click thereon and follow prompts and log in.

Utilise undermentioned indemnity in the case of lost share certificates:-

I N D E M N I T Y

To the Directors of XXXXXXXXXXXXXXXXXXXX PROPRIETARY LIMITED

WHEREAS the original share certificate number for _____ Ordinary shares in the above Company, of which I/we, the undersigned, hereby declare to be the legal owner, has been lost, mislaid or destroyed, I/we hereby make application for the issue of a replacement for the certificate, and in consideration of your issuing such a replacement, undertake and agree to deliver the original certificate to you should it come into our possession and agree to hold the Company, its directors, secretary, officers and employees and its transfer secretaries (hereinafter collectively referred to as ("those indemnified") harmless and indemnified against loss, liability, damages, claim charge, expense or cost (including legal costs on an attorney and client basis) which may be incurred or sustained by those indemnified by reason of the issue of the aforementioned replacement or as a result of the securities evidenced by the document being inadvertently transferred to another person at any time

I/We further do solemnly and sincerely declare that:

- a) the document has not been found despite all reasonable endeavours to do so;
- b) the securities evidenced by the document have not been assigned, pledged, or encumbered in any way and I/we absolutely and beneficially entitled thereto free from all encumbrances.

SIGNATURE OF WITNESS

.....

.....

.....

Address:

.....

.....

XXXXXXXXXXXXXXXXXXXXXXXXXXXX PROPRIETARY LIMITED
REGISTRATION NUMBER: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Resolution of Directors

Due to the statutory books and records not having been properly maintained over a number of years, and due to the loss of minute book containing signed resolutions and minutes, the directors wish to place on record, and for the sake of clarity, to confirm the current status of the company.

Directorate:

RESOLVED:

THAT it noted and confirmed that, as at the date of this resolution, the Board of Directors comprises the following persons:

Registered and Postal Address:

It was NOTED:

That the registered office and postal address is situate at :-

Auditors

It was RESOLVED;

That the auditors of the company are

Public Officer

It was RESOLVED;

THAT the public officer of the company is :

Financial Year End

RESOLVED;

THAT the company's financial year end terminates on the last day of each year.

Page 2

**XXXXXXXXXXXXXXXXXXXXXXXXX PROPRIETARY LIMITED
REGISTRATION NUMBER: XXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

Resolution of Directors

Lost Share Certificates

The directors wish to place on record that they have been advised the undermentioned original share certificates have been lost, and that all attempts to trace them have been unsuccessful:-

Share certificate No 1 in the name of for one hundred ordinary NPV shares
Share certificate No 2 in the name of for one hundred ordinary par value shares

Furthermore, the shareholders having delivered to the company signed Forms of Indemnity, and having requested that replacement share certificates be issued, it was hereby

RESOLVED :

THAT the issue of the replacement share certificates be and is hereby approved.

No. of Share Certificate	Shareholder	No. of shares
Certificate no 1	Joe Bloggs	100 ordinary NPV shares
Certificate no 2	The Joker Company Pty Ltd	100 ordinary par value shares

DIRECTOR

DIRECTOR



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Corporate Governance

What is Governance?



Principles

History

Failures



ICRAFT:

1. Integrity
2. Competence
3. Responsible in the execution tasks
4. Accountable
5. Fairness
6. Transparency



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Corporate Governance



Key Players

...in corporate governance

The Board
and
Committees

Assurance
Providers

The Board

The players on the board

Chairperson
/ Chairman



Directors



Prescribed
Officer (S66
(10)/Reg 38)



Company
Secretary /
Governance
Professional



Structure
and
composition



Chairperson / Chairman

- He/She leads the meeting and is responsible to keep the balance between staying on point and allowing sufficient discussion.
- He/She can be elected by members (or the shareholders)
- He/She may/may not have a casting vote

Directors

How many?

- Private company - 1
- Public company - 3
- Non-profit company - 3
- Listed public company - 4

Types of directors

- Executive directors
- Non-executive directors
- Independent non-executive directors
- Lead independent director
- Alternate directors

Terms you may hear

- Deemed directors
- Shadow directors

Ineligibility
S69

Disqualifications
S69(8)

Fiduciary
Duty (S76)

Ineligibility S69

- S69(1) Applies to directors, alternate directors, prescribed officer, committee member irrespective of part of the board or not.
- If a person is ineligible, disqualified or placed under probation can not be or act as a director.
- The MOI can add additional grounds for ineligibility or minimum qualifications.
- Director must a natural person and can't be an unemancipated minor

Disqualifications S69(8)

- A court declared delinquent
- Unrehabilitated insolvent
- Prohibited in terms of a public regulation
- Have been removed from an office of trust due to misconduct involving dishonesty (ends after 5 years)
- Convicted of theft, fraud, perjury or forgery (ends after 5 years)

Fiduciary Duty (S76)

Positive Duties

MUST act in good faith and proper purpose

MUST act in the best interests of THE COMPANY

MUST act with the degree of care, skill and diligence that may reasonably be expected of a person (objective and subjective test)

MUST communicate to the board at the earliest practicable opportunity any information that comes to the director's attention UNLESS:
info is immaterial
or he is bound by confidentiality or ethical obligation

Negative Duties

MUST NOT use the position of director, or any information obtained while acting in the capacity of director to gain advantage for him or a third party OR KNOWINGLY cause harm to the company

Note "knowingly" is defined in Section 1 to know or ought to have known (reasonable director test - subjective and objective)

Prescribed Officer (S66 (10)/Reg 38)

Despite NOT being a director a person is a prescribed officer if that person:

- exercise general executive control AND management of a whole or significant portion of the business and activities of the company

OR

- regularly participates to a material degree in the exercise of general executive control over and management of the whole or significant portion of the business and activities of the company

IRRESPECTIVE OF:

- the title given to a person; or
 - the function of the person.
-

VS

Public Officer

- Appointed with SARS i.t.o. the Tax Act
- If not any director chosen
- Duties - submit returns

**Company
Secretary /
Governance
Professional**

Company
Secretary
S86/87

Company Secretary S86/87

A public company or a state-owned co must have a Co Sec or if in MOI

The Co Sec must:

- have the requisite knowledge of, or experience in relevant laws; and
- be a permanent SA resident and remain so while serving in that capacity
- can be a juristic entity but must comply with normal rules.

(First one appointed within 40 days then vacancy to be filled within 60 business days).

Appointment / Resignations are a SENS announcement on the JSE

Duties of Co Sec S88

- providing the directors of the company collectively and individually with guidance as to their duties, responsibilities and powers;
- making the directors aware of any law relevant to or affecting the company;
- reporting to the company's board any failure on the part of the company or a director to comply with the Memorandum of Incorporation or rules of the company or this Act;
- ensuring that minutes of all shareholders meetings, board meetings and the meetings of any committees of the directors, or of the company's audit committee, are properly recorded in accordance with this Act;
- certifying in the company's annual financial statements whether the company has filed required returns and notices in terms of this Act, and whether all such returns and notices appear to be true, correct and up to date;
- ensuring that a copy of the company's annual financial statements is sent, in accordance with this Act, to every person who is entitled to it; and
- carrying out the functions of a person designated in terms of section 33 (3).

Resignation / Removal of Co Sec S89

The Co Sec may resign with 1 month's notice, shorter with approval from the board

If the Co Sec was removed then the Co Sec may require a statement by notice to be included as to the reasons for removal

**SUBMISSION TO THE MEETING OF THE BOARD OF DIRECTORS OF
XXXXXXXXXXXXX TO BE HELD ON**

BOARD COMMUNICATION AND ENGAGEMENT GUIDELINE

INTRODUCTION

The purpose of this submission is to provide guidance in respect to the development of a Board Communication and Engagement Guideline/Protocol which will define certain processes which will govern and regulate communication and engagement, between Management, the Company Secretary and the Board.

DISCUSSION

The Office of the Company Secretary is generally responsible for facilitating communication between Management, the Board and certain stakeholders.

As such, a Board Communication and Engagement Guideline will define certain process(es) which will govern and regulate communication and engagement in respect to matters pertaining to the Company, its business and operations.

The Board Communication and Engagement Guideline can provide guidance on the processes followed in respect to the following aspects, amongst others:

- i. Declaration of Conflicts of Interest.
- ii. The review process regarding policies (as these require in-depth analysis and review therefore should be provided to the Board at least 6 weeks prior to being tabled).
- iii. Round robin approvals (decisions made outside of meetings).
- iv. The notification of Board members regarding material matters of concern.
- v. Board member's request for independent advice (a Board-approved process is required in this regard).
- vi. Requests for access to information required for the discharging of fiduciary duties and/or investigation purposes.
- vii. Continuous and professional development (training).
- viii. Formal correspondence to Board members.
- ix. Formal correspondence to the shareholder and relevant stakeholders.

The primary objectives of the Board Communication and Engagement Guideline is to:

- i. Govern communication and engagement between Management and the Board, and certain stakeholders such as CIPC, in respect to all matters pertaining to the Company, its business and operations.
- ii. Regulate the engagement in Committee, Board and any other meetings held with the Board, Management and the relevant stakeholders.
- iii. Articulate the roles and responsibilities of different stakeholders in the communication process.

- iv. Regulate the communication paths between Management, Board and certain stakeholders to enhance communication and assist the Company in ensuring that business objectives are achieved.
- v. The objectives of the Board Communication and Engagement Guideline are to be achieved in line with the application of the Company's policies and applicable prescripts, such as the following, amongst others:
 - 1. Board Charter.
 - 2. Committees Terms of Reference.
 - 3. Memorandum of Incorporation.
 - 4. Non-Executive Director Remuneration Policy.
 - 5. Conflict of Interests Policy.
 - 6. Code of Ethics.
 - 7. PAIA Manual.

RECOMMENDATION

The Board notes the guidance in respect to the development of a Board Communication and Engagement Guideline/Protocol which will define certain processes which will govern and regulate communication and engagement, between Management, the Company Secretary and the Board.

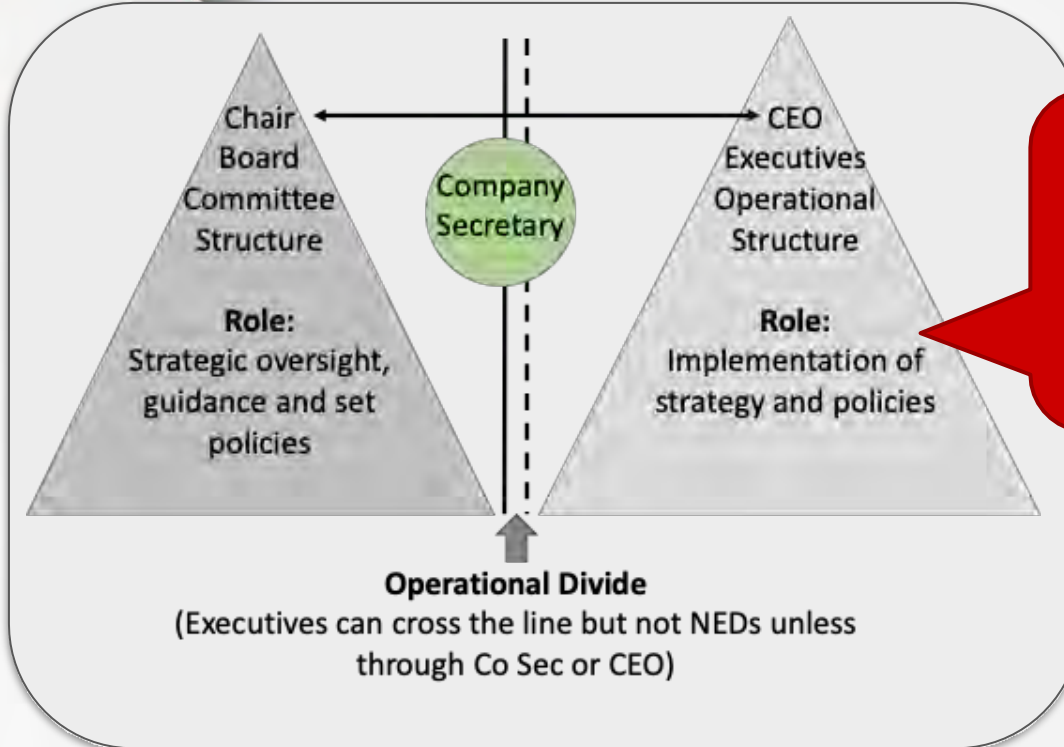
PREPARED BY:

SUPPORTED BY:

COMPANY SECRETARY

CEO

The Operational Divide



The Executives should hold the line when information requests are not of strategic importance

[Video Link: Ronelle Kleyn, CEO of FluidRock Governance Group, dives into the Operational Divide](#)

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Assurance providers

First line - Internal executives and management

Second line - Internal audit

Third line - External auditors

(Combined assurance model)



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Corporate Governance

Board Governance Processes

...remember

Declaration
of Conflicts
S75

The
Recusal
Process

Solvency
and liquidity
test (S4)

CONSEQUENCES

Meeting
management



Declaration of Conflicts S75

1. Annual general declaration
2. Per meeting general declaration
3. Per meeting specific declaration pertaining to an agenda point

Conflict of interests

Conflict of interests

A "director" means (the following for S75 and S76):

an alternate director

a prescribed officer

a person who is a member of a committee of the board
or a related party

Section 75(4)

A director MAY disclose any personal financial interest in advance (our general disclosure)

Note: We suggest that the general disclosures are done annually as a matter of course

Section 75(5)

If a director has a personal financial interest on a matter to be discussed at board or a related party then
he MUST disclose the general nature BEFORE the matter is considered at the meeting

MUST disclose material information relating to the matter

MAY disclose any observations or pertinent insights relating to the matter if requested by other directors

Personal Financial Interest (S1)

A personal financial interest as defined in the Companies Act is:

a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but

does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment.

[Comment: it is difficult to ascribe a finite meaning to the terms financial, monetary or economic nature. However, the definition of "material" that includes interests that might reasonably affect a person's judgment or decision making provides some clarity and implies that all shareholding should be disclosed (excluding unit trusts)].

The Recusal Process

1. Train directors up front and agree on the recusal process or include it in the board charter
2. How does it work?

Recusal

Recusal

Section 75(5)

...then leave the meeting immediately after such disclosure

MUST NOT take part in the consideration of the matter

Whilst absent from the meeting he is regarded as present in terms of the constitution of the meeting

IS NOT regarded to be present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted.

MUST NOT execute any document obo the company unless specifically authorised to do so

Solvency and liquidity test (S4)

A company satisfies the solvency and liquidity test at a particular time if, considering all reasonably foreseeable financial circumstances of the company at that time—

(a) the assets of the company, as fairly valued, equal or exceed the liabilities of the company, as fairly valued; and

(b) it appears that the company will be able to pay its debts as they become due in the ordinary course of business for a period of—

(i) 12 months after the date on which the test is considered; or

(ii) in the case of a distribution contemplated in paragraph (a) of the definition of "distribution" in section 1, 12 months following that distribution

The financial information to be considered concerning the company must be based on—

(i) accounting records that satisfy the requirements of section 28; and

(ii) financial statements that satisfy the requirements of section 29.

The board must consider a fair valuation of the company's assets and liabilities, including any reasonably foreseeable contingent assets and liabilities, irrespective of whether or not arising as a result of the proposed distribution, or otherwise.

Best
practice

Best practice

Table the solvency and liquidity test to the board at each board meeting.

Why? It protects directors and draws a line in the sand.

A statement that the board has assessed it on a certain date and attach the balance sheet and income statement.

CONSEQUENCES

The consequence of not complying to the disclosure process is:

A decision is only valid if:

it was approved following disclosure (NOTE NOT RECUSAL)

has been ratified by shareholders

has been declared valid at court



Meeting management

Annual planner (Flavour your meetings - financial / governance)

Meeting management policy and system

System:

T-20 days - Draft agendas circulated

T-15 days - Final agenda circulated and required reports requested

T -10 days - Reminder reports due

T-8 days - Create board pack and circulate (Confidentiality)

T- 7 days - Deadline to send board packs

D Day - Meeting

T + 1 day - Send action items to execs

T + 10 days - Circulate draft minutes to execs

T + 15 days - Circulate draft minutes to Chair

T + 20 days - Circulate draft minutes to board/committee

T + 30 days - Thank all and circulate final minutes to all

Sample annual
plan

Annual Planner: Board		Board Meeting				Subco-meeting									
Ref	Item	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Ad Hoc	Reported in detail at other Board/Ops sub-com	Workshop required	Management action	Accountability	Comment
Internal Audit															
19	Report regularly to the Board on the work of Internal Audit		B		B		A/R		A/R				Internal Auditor	A/R Co Chair	The internal audit reports to be circulated to all members
20	Oversee written assessments by Internal Audit on: 1. The systems of internal control 2. Risk management 3. Legal compliance 4. IT Governance 5. Stakeholder and ethics management 6. Any other matters required	B B	B B		B B B	A/R	A/R A/R			A/R	IT Steercom		Internal Auditor	A/R Co Chair	
21	Meet with Internal Audit once a year without management being present					A/R							Internal Auditor	A/R Co Chair	
External Audit															
22	Statutory duties: 1. Nominate Auditors for appointment by the Board 2. Determine the fees and terms of engagement of the Auditor 3. Determine the nature and extent of any non-audit services to be provided by the Auditor and to pre-approve any such services				B				A/R					A/R Co Chair	
23	Approve the: 1. Scope of the external audit 2. External audit plan 3. Resources to be utilised 4. Materiality levels 5. Timing of the audit 6. Any other relevant matters				B				A/R					A/R Co Chair	



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16 + 1 Principles



King IV on a
page

KING IV COMPARED TO KING V

HIGH-LEVEL OVERVIEW

King IV – current principle	King V – equivalent principle
<p>Principle 1 The governing body should <i>lead ethically and effectively</i>.</p>	<p>Principle 1 The governing body leads <i>ethically and effectively</i> as the focal point of corporate governance in the organisation.</p>
<p>Principle 2 The governing body should govern the ethics of the organisation in a way that supports the establishment of <i>an ethical culture</i>.</p>	<p>Principle 2 The governing body <i>governs the ethics</i> of the organisation in a way that fosters an ethical organisational culture and promotes <i>responsible corporate citizenship</i>.</p>
<p>Principle 3 The governing body should ensure that the organisation is and is seen to be a <i>responsible corporate citizen</i>.</p>	<p>Covered in Principle 2</p>
<p>Principle 4 The governing body should appreciate that the organisation's core purpose, its risks and opportunities, strategy, business model, performance and sustainable development <i>are all inseparable elements</i> of the value creation process.</p>	<p>Principle 3 The governing body ensures that the <i>organisation's purpose, business model and strategy</i> result in sustainable value creation within its economic, social and environmental context</p>
<p>Principle 5 The governing body should ensure that <i>reports issued</i> by the organisation enable stakeholders to make informed assessments of the organisation's performance, and its short, medium and long-term prospects.</p>	<p>Principle 4 The governing body ensures that <i>reports issued</i> by the organisation enable stakeholders to make informed and holistic assessments of how the organisation creates sustainable value within its economic, social and environmental context.</p>
<p>Principle 6 The governing body should serve as the <i>focal point and custodian of corporate governance</i> in the organisation.</p>	<p>N/A</p>
<p>Principle 7</p>	<p>Principle 5</p>

King IV – current principle	King V – equivalent principle
The governing body should comprise the <i>appropriate balance of knowledge, skills, experience, diversity and independence</i> for it to discharge its governance role and responsibilities objectively and effectively.	The <i>composition of the governing body is balanced</i> with respect to the <i>mix of competencies, diversity and independence</i> that enables it to discharge its governance role and responsibilities objectively and effectively.
Principle 8 The governing body should ensure that its arrangements for <i>delegation within its own structures</i> promote independent judgement and assist with balance of power and the effective discharge of its duties.	Principle 6 The governing body ensures that arrangements for <i>delegation to its committees</i> and individuals within its own structures support the objective and effective discharge of its governance responsibilities.
Principle 9 The governing body should ensure that the <i>evaluation of its own performance</i> and that of its committees, its chair and its individual members, supports continued improvement in its performance and effectiveness.	Covered in Principle 1
Principle 10 The governing body should ensure that the appointment of, and <i>delegation to, management</i> contributes to role clarity and the effective exercise of authority and responsibilities.	Principle 7 The governing body ensures that the <i>appointment of and delegation to management</i> result in operational effectiveness and clarity on authority and responsibilities.
Principle 11 The governing body should <i>govern risk</i> in a way that supports the organisation in setting and achieving strategic objectives.	Principle 8 The governing body <i>governs risk</i> and compliance to enable the organisation to expand its opportunities and set and achieve its strategic objectives.
Principle 12 The governing body should <i>govern technology and information</i> in a way that supports the organisation setting and achieving its strategic objectives.	Principle 9 The governing body <i>governs information and its deployment through technologies</i> to enable the organisation to expand its opportunities and set and achieve its strategic objectives.
Principle 13 The governing body should <i>govern compliance</i> with applicable laws and adopted, non-binding rules, codes and standards in a way	Principle 8 The governing body governs risk <i>and compliance</i> to enable the organisation to expand its opportunities and set and achieve its

King IV – current principle	King V – equivalent principle
that supports the organisation being ethical and a good corporate citizen.	strategic objectives.
<p>Principle 14 The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.</p>	<p>Principle 10 The governing body ensures that the organisation remunerates fairly, responsibly and transparently to promote sustainable value creation within its economic, social and environmental context.</p>
<p>Principle 15 The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports.</p>	<p>Principle 11 The governing body ensures that assurance services and functions enable an effective control environment and safeguard the integrity of information used for decision making and disclosure by the organisation.</p>
<p>Principle 16 In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.</p>	<p>Principle 12 The governing body, in acting in the best interests of the organisation over time, adopts a stakeholder-inclusive approach which takes into account material stakeholders' interests.</p>

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