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GOVERNMENT NOTICES

DEPARTMENT OF TRADE AND INDUSTRY

No. R. 647

24 August 2012

Issue date: 3 May 2011
(Replaces notice of same content issued 26/04/2011)



Companies and Intellectual
Property Commission
a member of the dti group

GUIDANCE NOTE 1 OF 2011 COMPANIES ACT 71 OF 2008 REGISTRATION OF COMPANIES

This guidance note is issued in terms of 4 of the Companies Regulation, 2011 and is applicable to companies. This practice note refers to the requirements as set forth in:

- Section 65 of the Companies Act, 2008; and
- Section 41 of the Companies Amendment Bill, 2010

There is some uncertainty regarding the transitional arrangements regarding registration of special resolutions after the new Companies Act, 2008, becomes effective on 1 May 2011. In many cases the new Act does not require the registration with the CIPC of a special resolution for it to be legal and binding on the company and consequently the resolution becomes effective when passed and there is no need to file the resolution.

In cases where the Act requires a special resolution to be passed and filed with the CIPC, such as a change of name, the special resolution must be filed under cover of the appropriate COR Form for registration. Section 65 (11) of the Act contains a summary of all matters requiring the passing of a special resolution with an appropriate cross reference to the section in the Act concerned (Please note that this section has been extensively amended by the Companies Amendment Act, 2011, in order to provide a comprehensive list).

For purposes of the transition from the old to the new Act, the following guidelines would apply when lodging special resolutions:

- Special resolutions passed in terms of the Companies Act, 1973, but not submitted for registration prior to the effective date of the new Act, may still be lodged for registration, provided that it is done under cover of the new COR forms (whichever is applicable);
- Registration of special resolutions which are no longer required under the new Act, but essential for companies to proceed with certain activities, may still be lodged for registration by the CIPC, provided that it is submitted under cover of a letter by the company and/or its authorized representative, requesting registration and explaining the reasons for the necessity.
- In cases where notice of a meeting at which a special resolution is to be passed has been given before the effective date of the new Act, but the resolution is only passed after the effective date of the Act, such special resolutions must be filed in compliance with the new Companies Act, and under cover of the new forms applicable.

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 6/1/2011

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GUIDANCE NOTE 2 OF 2011 COMPANIES ACT 71 OF 2008 REGISTRATION OF COMPANIES

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies.

The Companies Regulation, 2010 makes provision for 5 different set of company registration documents each with its own variances. This guidance note is issued to guide customers on what documents must be filed with the incorporation of local companies and registration of external companies and is not a guide on how to complete such documents.

Private Company:

There are two sets of forms that may be used for private company registrations namely CoR15.1A or CoR15.1B. Private companies must at all times have at least one director (unless Mol indicated a higher minimum number of directors). The appointment of an auditor is not mandatory but optional.

(1) Standard Private Company with default requirements as per Companies Act, 2008

The following documents must be filed:

- CoR15.1A
- CoR14.1
- Supporting documents, namely:
 - Certified passport copies (if foreign national) or certified ID copies (if South African) of all indicated initial directors and incorporators
 - Certified ID copy of applicant if not the same as one of the indicated initial directors or incorporators
 - If an incorporator is a juristic person, then a power of attorney for the representative authorised by such juristic person to incorporate the company and sign all related documents
 - If another person incorporates the company and sign all related documents to the incorporation on behalf of any or all of the incorporators and initial directors, a power of attorney and certified ID copy of such person is required
 - If a name was reserved before filing of incorporation documents, then a valid name reservation document is necessary¹

The following documents may be filed with the CoR15.1A:

- CoR14.1 Annexure A
- CoR14.1 Annexure B in the instances where there a name was not reserved before filing of CoR15.1 A but the incorporators elect to apply for a name reservation with incorporation documents.

¹ The applicant (customer) who reserved the name must be same as the applicant filing the incorporation documents. If not the same, an application for the transferring of name must be approved first on CoR11.1

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A CoR14.1 Annexure A MAY BE filed in the following instances²:

- The initial directors of a company has already been appointed before incorporation and such are not the same as the incorporators; or
- One or more of the incorporators³ of a company is a juristic persons and the count of natural incorporators (first directors) is below the minimum 1 director as required by the Act, or the minimum number of directors specified on the CoR15.1A.

If the CoR14.1 Annexure A is not filed at incorporation but the above instances are applicable, a CoR39 must be filed within 40 business days after incorporation to notify the CIPC of the details of the directors appointed.

(2) Customised Private Company registration:

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C if ring fencing conditions are applicable⁴
- CoR14.1 Annexure D if an auditor, audit committee members and/or company secretary is appointed at the time of incorporation and if the private company has elected to company with enhanced accountability requirements as indicated Chapter 3 of the Companies Act^{5 6 7 8}

If the CoR14.1 Annexure D is not filed at incorporation but the private company has elected to require the appointment of an auditor, company secretary and/or audit committee

² The incorporators of a company are regarded as the first director (Section 67 of Companies Act, 2008)

³ The incorporators of a company may either be juristic or natural persons (Definition of an "incorporator" read with the definition of "person" as stated within section 1 of the Companies Act, 2008)

⁴ Definition of "ring fencing" as stated within section 1 and requirements as stated within section 16 of the Companies Act, 2008

⁵ An auditor may not be the same person as a director (including audit committee member), officer (including company secretary) or a director, officer or employee of a person appointed as company secretary of the company (Section 90(2))

⁶ Appointment requirements for audit committee members are set out in section 94 of the Companies Act, 2008

⁷ Appointment and maintenance requirements for auditors are set out in sections 90 to 92 of Companies Act, 2008

⁸ Appointment and maintenance requirements for company secretaries are set out in section 86 to 89 of Companies Act, 2008

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members a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

Personal Liability Companies

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C if ring fencing conditions are applicable⁹
- CoR14.1 Annexure D (kindly refer to notes as indicated under Customised Private Company)

If the CoR14.1 Annexure D is not filed at incorporation but the personal liability company has elected to require the appointment of an auditor, company secretary and/or audit committee members a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

The MoI of a personal liability company must state that it is a personal liability company¹⁰.

Public Companies

Public companies may only be incorporated on a CoR15.1B. Public companies must at all times have at least 3 director (unless MoI indicated a higher minimum number of directors), 3 audit committee members (unless MOI indicates a higher number of audit committee members), 1 juristic or natural company secretary that must be resident in the Republic¹¹ and 1 juristic or natural auditor.

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

⁹ Definition of "ring fencing" as stated within section 1 and requirements as stated within section 16 of the Companies Act, 2008

¹⁰ Section 8(2)(c) of Companies Act, 2008

¹¹ Section 86(2) of the Companies Act, 2008

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- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR 14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D

If the CoR14.1 Annexure D is not filed at incorporation a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

State-Owned Company

State-owned companies may only be incorporated on a CoR15.1B. State-owned companies must at all times have at least 3 director (unless MOI indicated a higher minimum number of directors), 3 audit committee members (unless MOI indicates a higher number of audit committee members), 1 juristic or natural company secretary that must be resident in the Republic and 1 juristic or natural auditor¹².

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

Non Profit Company

There are three sets of forms that may be used for non profit company registrations namely CoR15.1C, D or E. Non profit companies must at all times have at least one director (unless MOI indicated a higher minimum number of directors). The appointment of an auditor and company secretary is not mandatory but optional.

(1) Standard Non Profit Company default requirements as per Companies Act, 2008 (without members)

The following documents must be filed:

¹² Section 9(1) of the Companies Act, 2008

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- CoR15.1C
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1C:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)

(2) Customised Non Profit Company (without members)

The following documents must be filed:

- CoR15.1D
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1D:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

(3) Customised Non Profit Company (with members)

The following documents must be filed:

- CoR15.1E
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1E:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

External Companies

The registration documents of an external company are filed using a form CoR20.1

The following documents must be filed for the registration of an external company:

- CoR20.1
- CoR20.1 Annexure A

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- Supporting documents, namely:
 - Certified passport copies (if foreign national) or certified ID copies (if South African) of all indicated directors
 - Certified ID copy of applicant if not the same as one of the indicated directors
 - If another person sign all related documents to the registration on behalf of any or all of the directors, a power of attorney and certified ID copy of such person is required
 - Certified copy of foreign company constitution
 - Certified copy of jurisdiction of incorporation within which it is incorporated
 - Certified copy of current registration certificate
 - If constitution, incorporation certificate and/or registration certificate is in any other language except any one of the official languages of the Republic the translated version of such documents including the translation certificate.

Yours faithfully,

.....
Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 21/05/2011

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**GUIDANCE NOTE 3 OF 2011
 COMPANIES ACT 71 OF 2008
 CHANGES TO EXTERNAL COMPANY DETAIL**

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to external companies (foreign companies registered within Republic).

The following forms must be used to file changes to external company detail:

- Directors – CoR39
- Registered or postal address within Republic – CoR21.1
- Person authorised to accept service of documents on behalf of external company – CoR21.2

When filing the indicated documents all requirements as stated on the form or practice note for such form must be complied with.

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 8/5/2011

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No. R. 650

24 August 2012



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GUIDANCE NOTE 4 OF 2011
COMPANIES ACT 71 OF 2008
NO MORE CONVERSION FROM COMPANY TO A CLOSE CORPORATION

This guidance note is issued in terms of Regulation 4 of the Companies Regulations, 2011 and relates to:

- Section 27 of the Close Corporation Act, 1984 (as repealed);
- Paragraph 2 of Schedule 3 of the Companies Act, 2008; and
- Section 3 of Schedule 5 of the Companies Act, 2008.

The Companies Act, 2008, repealed Section 27 of the Close Corporations Act, 1984 relating to the conversion of companies to close corporations. This means that with effect from 01 May 2011 the Companies and Intellectual Property Commission (CIPC), which was established as a result of Companies Act 2008, will not process any application relating to the conversion of a company to a close corporation.

As stipulated in section 2 of Schedule 5 of the Companies Act, 2008, the CIPC will finalise all existing conversion applications filed before 1 May 2011 in terms of section 27 of the Close Corporations Act.

Finally, it is worth to note that registered Close Corporations will continue to be maintained on the CIPC database.

Yours faithfully,

Ms Astrid Ludin

Commissioner: CIPC

Date: 10.1.6.2011

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GUIDANCE NOTE 5 OF 2011 COMPANIES ACT, 2008 VETTING AND REGISTRATION OF PROSPECTUSES

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies with the implementation of the Companies Act, 2008 on 1 May 2011.

The Companies Act, 2008 provides for the lodgment and registration of Prospectuses under cover of form COR 46.4. It is important to note that there is no form for the lodgment of a draft prospectus for vetting purposes. In order to simplify the process of first lodging a draft of the prospectus to be registered for vetting purposes, and to ensure that the final product is in accordance with the Act, the following process needs to be followed:

- Lodgment of a draft prospectus needs to be clearly marked as a draft and lodged under a cover letter and not a form COR 46.4. The fee applicable in the case of a draft is R 2000, and this fee will be charged for each draft of a specific prospectus lodged;
- Lodgment of a prospectus with all its original attachments for registration purposes needs to be lodged under cover of form COR 46.4 and the fee applicable is R 5000.

Please note, that each prospectus or rights offer lodged with the CIPC is subject to consideration and approval by a Prospectus Vetting Committee.

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
 Date: 3/5/2011

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No. R. 652

24 August 2012



Companies and Intellectual
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27 July 2011

GUIDANCE NOTE 6 OF 2011

**CONVERSION OF PRE-EXISTING COMPANIES LIMITED BY GUARANTEE IN TERMS OF
COMPANIES ACT 71 OF 2008
(SCHEDULE 5, ITEM 4(d)(i) and (ii))**

With the inception of the new Companies Act, 71 of 2008, certain transitional arrangements were provided for in the Act, to make the transition from the previous to the current applicable Act as smooth as possible. Part of these transitional arrangements focuses on pre-existing companies limited by guarantee.

Schedule 5, Item 4(d) provides for all pre-existing Companies Limited by Guarantee, other than in terms of Sect 21 of the previous Act, to file a notice with the Commission, electing to become a profit company, within 20 (twenty) business days from the effective date, and to change its name in so far as its required to comply with Sect 11(3)(b).

Since the 20 (twenty) business day period has lapsed, Companies Limited by Guarantee will be afforded a further **30 (thirty) business days** in terms of Regulation 166, from date hereof within which to file a notice with the Commission under cover of form COR 15.2 (with supporting documentation), electing to become a profit company as allowed by the Act, and to amend its Memorandum of Incorporation accordingly.

If a company however fails to file a notice within the extended period, such a company will be deemed to have amended its Memorandum of Incorporation as of the effective date to expressly state that it is a non-profit company as described in the Act, and has changed its name in so far as required to comply with Sect 11(3)(b).

Yours sincerely

Ms Astrid Ludin

COMMISSIONER

3 August 2011

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**GUIDANCE NOTE 7 OF 2011
CONVERSION OF CLOSE CORPORATIONS TO COMPANIES IN TERMS
OF THE COMPANIES ACT, 2008 (ACT 71 OF 2008)**

This guidance note is issued in terms of Regulation 4 of the Companies Regulations, 2011, and is applicable to the conversion of close corporations into companies. The note is based on –

- Schedule 2 of the Companies Act, 2008; and
- Annexure 2, Table CR 2B of the Companies Regulations, 2011

Conversion of close corporation into profit company

A close corporation may, in terms of item 2 of Schedule 2 of the Companies Act, 2008 (the Act), convert into a profit company having shares, i.e. a private company, a public company or a personal liability company.

Application for conversion

The application to convert into a profit company must be made on Form CoR18.1 and the following forms and documentation must accompany the application:

- The original written resolution or statement of consent, approving the conversion of the close corporation, signed by members holding in the aggregate at least 75% of the members' interests in the corporation. The resolution or statement of consent must clearly indicate the decision to convert the corporation into a company and that that the members who approved the conversion hold an aggregate of at least 75% of the members' interest. The interest of each member who approved or voted against the conversion must be indicated in the resolution or statement of consent;
- Form CoR 39 to identify the initial directors of the company;
- Certified copies of the identity documents of the initial directors;
- a Memorandum of Incorporation for the company to be formed that may either take the form of a CoR 15.1A or CoR 15.1B or alternatively the company's own unique Memorandum of Incorporation. If Form CoR 15.1A or CoR 15.1B is used, reference to "incorporators" on the form must be ignored for purposes of the conversion;
- Form CoR 21.1 if a change in registered office is to be made;
- Form CoR 25 if a change in financial year end is to be made;
- Form CoR 44 if an auditor for the company has been appointed
- Form CoR 44 if a company secretary has been appointed;
- Form CoR 44 if an audit committee has been appointed;
- Form CoR 9.4 (reserved name) if a change of name must take place upon conversion.

All forms filed with the Form CoR18.1 must be completed using the name the company would use after conversion.

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Prescribed fee of conversion application

For the first 3 years following the implementation of the Act on 1 May 2011, there will be no prescribed fee payable for incorporating the company upon conversion but after that period the prescribed conversion fee will be the same as for incorporating a new company.

All other prescribed fees, remain payable.

Effect of conversion

All members of the close corporation are entitled to become shareholders of the company but the allocation of the shares does not necessarily have to be in proportion to the members' interests in the close corporation. It is not required that all members must become directors of the company.

The juristic person that existed as a close corporation before the conversion continues to exist after the conversion but in the form of a company. Furthermore, upon conversion, all assets, liabilities, rights and obligations of the close corporation vest in the company.

Accounting Officer or Auditor

The appointment of an accounting officer of the close corporation is terminated upon conversion. If the same person is to conduct the independent review in terms of Companies Regulation 29 after the conversion the company must reappoint him or her in this new capacity. No formal notification to the CIPC of the appointment is required.

If the new company is a public company or is required by its MoI to audited, an auditor must be appointed and Form CoR44 must be filed at conversion.

Yours sincerely,

MS ASTRID LUDIN
COMMISSIONER: CIPC
24 AUGUST 2011

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No. R. 654

24 August 2012



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GUIDANCE NOTE 1 OF 2012

CHANGE OF FINANCIAL YEAR END

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies.

A company may change its financial year end by lodging a Form CoR25 with the CIPC.

The form must comply with the following requirements,

- (1) It must be the first change of the financial year end, as a company may only change its financial year end once during a particular financial year;
- (2) The current financial year must not have ended;
- (3) The new financial year end must be later than the date of the lodgment of the Form CoR25 with the CIPC;
- (4) The new financial year end may not result in a financial year longer than 15 months;
- (5) The Form CoR25 must be signed by an active director, company secretary or other authorised person of the company.

In order to determine whether the Form CoR25 complies with the above requirements, the day, month and year of the current financial year end, as well as the new financial year end, must be clearly specified on the form.

The Form CoR25 will be returned to the customer for correction if the above stated requirements are not complied with.

Yours faithfully

Astrid Ludin
Commissioner: CIPC
Date: 17/8/2012

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No. R. 655

24 August 2012



Companies and Intellectual
Property Commission
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**GUIDANCE NOTE 2 of 2012
COMPANIES ACT, 2008**

**APPLICATION FOR DEREGISTRATION OF COMPANIES AND CLOSE
CORPORATIONS**

The Companies Act, 2008 allows the Commission to deregister a company or close corporation upon request from the company or close corporation or any other party, provided that the company or close corporation:-

- (a) has ceased to carry on business; and
- (b) has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company being liquidated.

In order for the CIPC to process the deregistration request, the following information is required on an original letter head of either the company or close corporation or any other person applying for deregistration:-

- statement confirming that the company or close corporation is not carrying on business or is dormant, and has no assets or, because of the inadequacy of its assets, that there is no reasonable probability of the company being liquidated,
- tax number (if available),
- if the company or close corporation submits the request, the letter must be signed by each active director, member or the company or close corporation's duly authorised representative or otherwise by the person who is requesting the deregistration, and
- a certified ID copy of any of the persons signing the letter must be attached.

The request for deregistration will be returned to the applicant for correction if any of the above stated requirements are not complied with.

Astrid Ludin

Commissioner: CIPC

Date: 8/2/2012

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No. R. 656

24 August 2012



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GUIDANCE NOTE 3 of 2012**RE-INSTATEMENT OF COMPANIES AND CLOSE CORPORATIONS****(A) Re-instatements due to non compliance with lodging of annual returns**

The annual return re-instatement process consists of 3 main steps:-

1. The application for re-instatement is processed and the status of the entity is changed to "*deregistration process*", where after the entity is required to lodge all outstanding annual returns via the CIPC website.
2. Once all the outstanding annual returns have been brought up to date, the status will be changed to "*in business*".
3. After the status has been changed back to "*in business*", the CIPC will publish the successful re-instatement on its website under CIPC Publications & Documents/CIPC e-Gazette.

(B) Re-instatements with deregistration date 16 July 2010 / 21 February 2011 and due to non compliance with lodging of annual returns

A re-instatement application for a company or close corporation which was deregistered 16 July 2010 / 21 February 2011 for failure to comply with annual returns must consist out of the following:-

- (1) CoR40.5;
- (2) Certified copy of ID of applicant (owner of customer code); and
- (3) Certified copy of ID of director/member;

The official fee payable in respect hereof is R200.00.

Any person who intends to apply to re-instate a company or close corporation may apply for re-instatement by following steps 1 to 3 as indicated in paragraph A here above. The original application may either be posted, or hand delivered to the CIPC offices, or scanned copies may be e-mailed to vvdyk@cipc.co.za.

For companies and close corporations deregistered on 16 July 2010 or 21 February 2011, an electronic lodgment facility has been made available on the CIPC website (www@cipc.co.za) and the processing of the application is immediate.

Important: It is imperative to note that the re-instatement process is a two step process:-

- a) The re-instatement application must be lodged and successfully processed, whereafter
- b) All outstanding annual return documents must be lodged and outstanding fees must be paid electronically before the re-instatement will become fully effective. It is only after all outstanding annual returns have been paid and filed that the status of the company or close corporation will be changed to "*in business*".

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If all the outstanding annual return forms and fees are not submitted after the successful processing of the re-instatement application, such failure would result in the company or close corporation being referred again for deregistration, and eventually final deregistered.

It should be noted that the above is a simplification of the prescribed re-instatement procedure for companies and close corporations, were the entity was deregistered for failure to comply with annual returns, and was implemented to simplify the re-instatement a process for entities which were deregistered during the bulk deregistration endeavor of CIPC.

This simplified procedure is therefore a courtesy and may be withdrawn and replaced by the normal re-instatement procedures by CIPC at anytime.

Subsequent to the above process, other re-instatement procedures exists based on the reason for the de-registration. Therefore, please ensure that the correct procedure is followed when applying for re-instatement of an entity.

(C) Re-instatements where deregistration was due to annual returns, with a final deregistration date other than 16 July 2010 / 21 February 2011, or due to other reasons

In cases where the company or close corporation was deregistered for non-compliance with lodging of annual returns, and the deregistration date is not 16 July 2010 / 21 February 2011, or a third party or the company or close corporation itself applied for deregistration, the normal re-instatement procedure as indicated in practice note 2 of 2011 must be followed.

Important: It is imperative to note that the re-instatement process is a two step process:-

- a) **The re-instatement application must be lodged and successfully processed, whereafter**
- b) **All outstanding annual return documents must be lodged and outstanding fees must be paid electronically before the re-instatement will become fully effective. It is only after all outstanding annual returns have been paid and filed that the status of the company or close corporation will be changed to "in business".**

(D) Re-instatement by court order

Although the Companies Act, 2008 does not provide for the authority of a company or close corporation to approach the High Court for a court order in respect of re-instatement, such court orders are processed by the CIPC as and when same are received.

It is recommended that the Notice of Motion is either served on the CIPC (if the CIPC is cited as a party to the application), or a copy of the duly served Notice of Motion is filed with the CIPC before the court date.

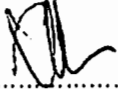
Once the High Court has issued an order, an original or certified copy of the court order and copy of the Notice of Motion, if not provided before, must be submitted to the CIPC for processing. With the court order, the person lodging the court order for processing, must indicate the customer code under which such document must be processed.

If the application was made by the company or close corporation, or any of its directors or share holders (if a company), or members (if a close corporation) itself, the court order as well as other statutory forms (except annual returns) as stated in the court order must be submitted with the court order. If the order requires that annual returns must be lodged, such may only be lodged electronically after the court order and other statutory documents have been processed by CIPC. If the court order did not require the lodging of any other statutory documents, CIPC will require the company or close corporation to provide CIPC with updated information on its latest directors, registered addressed and auditors' information after the processing of the court order.

Failure in respect of the above would result in a Compliance Notice being issued.

In instances where a creditor of the company or close corporation applied to the High Court for the re-instatement, the original or certified copy of such court order must be submitted. It is recommended that the creditor advise CIPC of all contact details of the company or close corporations and its directors or members, in order for CIPC to issue a Compliance Notice to the company or close corporation.

Yours faithfully



~~Astrid Ludin~~ Adv. Romy Volke
Commissioner: CIPC (Acting)
Date: 5 March/2012

No. R. 657

24 August 2012

Issue date: 3 May 2011



Companies and Intellectual
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**PRACTICE NOTE 1 OF 2011
COMPANIES AND CLOSE CORPORATIONS
POSTAL AND PHYSICAL ADDRESS REQUIREMENTS**

This practice note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies (local and external) and close corporation filings.

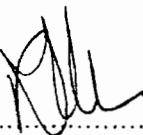
The CIPC requires that all postal and physical addresses required by any electronic and manual form be structured in a specific manner in order to allow for better statistical records and data quality. In this regard the following information must be provided:

- Physical address:
 - Street number;
 - Street name;
 - Suburb/town/city;
 - Province; and
 - Street code
- Postal address:
 - Postal number or description
 - Suburb/town/city;
 - Province; and
 - Postal code

If the address provided is outside of the Republic, the country description must also be provided.

Any form filed with the CIPC that does not comply with the above requirements will be rejected.

Yours faithfully,



.....

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 3./5./2011

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No. R. 658

24 August 2012

Issue date: 3 May 2011
 (Replaces notice of same content issued 26/04/2011)



Companies and Intellectual
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PRACTICE NOTE 2 OF 2011 COMPANIES AND CLOSE CORPORATIONS DEREGISTRATION AND RE-INSTATEMENT PROCEDURE

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies and close corporations. This practice note refers to the requirements as set forth in:

- Section 82 of the Companies Act, 2008;
- Schedule 3 Part 8; and
- Companies Act Regulation 40

The Commission may start the deregistration process for companies and close corporations in the following instances:

- The company or close corporation failed to lodge annual returns for two successive years;
- The company or close corporation requests the deregistration of the company or close corporation and the request indicates that the company or close corporation has ceased to carry on business and has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company or close corporation being liquidated; or
- The Commission believes that the company or close corporation has been inactive for a period of 7 years.

Once the company or close corporation has been referred for deregistration the status will be changed to "in deregistration process" and a CoR 40.3 (Demand notice concerning inactive company) will be issued. The company or close corporation will have 20 business days to either object or in the case of outstanding annual returns to submit all outstanding annual returns. If no objection has been received within the 20 business day period the Commission will issue a CoR40.4 (Notice of Pending Deregistration of company or close corporation). If no further response within the required 20 business day period, the Commission will refer the entity for final deregistration and issue a final deregistration letter.

If the entity was referred for deregistration due to annual return non-compliance a compliance certificate CoR139.1 will be issued wherein the entity has 15 business days to submit all outstanding annual returns. If no annual returns are lodged, the

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Issue date: 3 May 2011
(Replaces notice of same content issued 26/04/2011)



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Commission will issue a CoR40.4 and if still no annual returns are received within the required 20 business day period, the Commission will deregister the entity and issue a final deregistration letter.

Once the entity has undergone final deregistration any interested party may apply for its re-instatement on a CoR40.5, which must be submitted by either mailing the original application or filing the application at the CIPC offices with the following supporting documents:

- Certified ID copy of all members/directors
- Certified ID copy of applicant
- Deed search
- If immovable property letter from Treasury and a letter from Public Works
- Copy of extract in local newspaper giving 21 days clear notice of application

If the entity was referred for final deregistration July 2010 or February 2011 due to non compliance with annual returns the application for re-instatement may be done by filing the CoR40.5 electronically via annualreturns@cipc.co.za or manually by either mailing the original application or filing at the CIPC offices with the following supporting documents:

- Certified ID copy of all members/directors
- Certified ID copy of applicant

It should be noted that an automated re-instatement system is being developed to allow such applications to be lodged through the CIPC website. The release of this facility will be communicated in due course.

Yours faithfully

.....
Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 5/5/2011

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No. R. 659

24 August 2012

Issue date: 3 May 2011



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**PRACTICE NOTE 3 OF 2011
COMPANIES AND CLOSE CORPORATIONS
PROCEDURE FOR APPROVAL FOR DISTRIBUTION OF
COMMISSION FORMS**

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies, close corporations and co-operative forms.

Customers requesting permission to reproduce companies, close corporations and co-operative forms must request such on a letterhead and address it to the relevant senior manager responsible for the division. The request must indicate the following minimum information:

- Scope of distribution
- Person or organisation requesting permission with contact details
- Set of the forms to which the request relates

The set of forms must contain at the bottom of each form the following disclaimer:

"This form is reproduced and/or distributed by <insert name of organisation> with the permission of the CIPC under Government Printing Works Authority number 11535 on conditions as determined by the CIPC from time to time. Copyright of this form vests with the CIPC and it is not liable for any misrepresentation or error on this form and any subsequent loss or damages suffered by any party in the use of this form."

The CIPC will issue a formal letter indicating permission for the reproduction and distribution of the forms and the conditions on which it is provided.

It should be noted that the CIPC may revoke an organisation's right to reproduce or distribute the forms at any time with prior notice

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 3/5/2011

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No. R. 660

24 August 2012

Issue date: 3 May 2011



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**PRACTICE NOTE 4 OF 2011
COMPANIES ACT, 2008
DETAIL OF INCORPORATORS ON LOCAL COMPANIES**

This practice note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies with the implementation of the Companies Act, 2008 on 1 May 2011.

With the introduction of the Companies Act, 2008 the concept of subscribers is replaced with incorporators. Incorporators are not required to subscribe to the shareholding of the company that is to be incorporated although the incorporators shall be regarded as the first directors of the company in the absence of details of initial directors being provided on CoR14.1 Annexure A.

Therefore, since the incorporators are regarded as the first directors of the company the following information must be provided on CoR15.1A, B, C, D or E:

- Name, surname, identity number (including passport if foreign national) and address of the incorporator in the case where the incorporator is a natural person; or
- Name, registration number and address of each incorporator in the case where the incorporator is a juristic person.

To this extent, the address requirement for an incorporator shall be the postal address of the incorporator and either an e-mail address or cell phone number. If the postal address and e-mail address or cell phone number is not provided on the manual or electronic CoR15.1A, B, C, D or E then such documentation will be rejected.

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 11/5/2011

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No. R. 661

24 August 2012

Issue date: 3 May 2011



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**PRACTICE NOTE 5 OF 2011
COMPANIES ACT, 2008
DETAIL OF DIRECTORS TO BE PROVIDED ON COR 14.1
ANNEXURE A AND COR 39**

This practice note is issued in terms of Regulation 4 of the Companies Regulation, 2011.

The CIPC requires that e-mail addresses and/or cell phone numbers of directors be indicated on CoR14.1 Annexure A and CoR 39 as a security measure and communication medium.

If such additional information is not provided on the indicated forms, regardless of format, the form will be rejected.

Yours faithfully,

.....
Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 5/5/2011

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No. R. 662

24 August 2012

Issue date: 3 May 2011
(Replaces notice of same content issued 26/04/2011)



Companies and Intellectual
Property Commission
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**PRACTICE NOTE 6 OF 2011
COMPANIES ACT, 2008
DETAIL REQUIRED FOR REGISTRATION OF EXTERNAL COMPANIES**

This practice note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and relates to external companies.

In order to ensure that the CIPC has relevant and usable information relating to external companies additional information as per CoR20.1, CoR20.1 Annexure A and CoR21.2 is required.

On the CoR20.1, the CIPC requires both the physical and postal address of the principal office of the external company both within and outside of the Republic.

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 the Republic. The following additional information of such person, on both the CoR20.1 and CoR21.1 is required:

- Name and surname
- If South African his/her identity number
- If foreign national his/her passport, date of birth and country of origin
- Postal address within the Republic
- Physical address within the Republic
- E-mail or cell phone number

CoR20.1 Annexure A reflects that only natural persons may be directors of an external company which is erroneous. In instances where a director is a juristic person the reference to full name/former name will refer to the name of the juristic person and identity number and passport number refer to its registration number. The e-mail address and/or cell phone number of the director (regardless whether juristic or natural) must be provided. Lastly, reference to occupation may be ignored.

It should be noted that the indicated additional information is mandatory and forms will be rejected if they do not comply.

Yours faithfully,

Adv Rory W Voller
Deputy Commissioner: CIPC
Date: 11/01/2011

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No. R. 663

24 August 2012

Issue date: 29 August 2011



PRACTICE NOTE 9 OF 2011

USE OF CUSTOMER CODES ON CoR14.1, CoR15.2, CK1 AND CK2

This practice note is issued in terms of Regulation 4 of the Companies Regulations, 2011.

The Companies and Intellectual Property Commission (CIPC) has been notified of instances in which name reservation certificates (Form CoR9.4) are stolen and used to effect registrations or name changes for other parties.

In order to address this problem, the CIPC will require that the customer code used to effect the CoR9.1, CoR9.2, CoR10.1 and CoR10.2 applications be the same as the customer code used when lodging CoR14.1, CoR15.2, CK1 and CK2 applications, all of which require a form CoR9.4. The date of implementing this control measure will be the 25th August 2011.

If different customer codes have to be used, the CIPC will from the said date, require that the CoR14.1, CoR15.2, CK1 or CK2 applications be accompanied by a Power of Attorney. The Power of Attorney must identify both the applicant for forms CoR9.1, CoR9.2, CoR10.1 or CoR10.2 and the applicant for forms CoR14.1, CoR15.2, CK1 or CK2, and must provide the reason for different customer codes. The Power of Attorney must be commissioned by the applicant indicated on form CoR 9.4.

Failure to comply with these requirements will result in the application being rejected.

Please note:

- Every customer is kindly reminded to keep their Customer Code PIN confidential.
- The New Companies Act makes provision for an official transfer of a reserved name through use of a form CoR 11.1.

Kind Regards

Astrid Ludin
Commissioner: CIPC
Date: 29 August 2011

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No. R. 664

24 August 2012



Companies and Intellectual
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PRACTICE NOTE

DEAR VALUED CUSTOMER

Procedures in relation to amendments to Auditors or Company Secretary (done by way of Form CoR44) are prescribed in Section 85 of the Companies Act, Act 71 of 2008 ("the Act"), read together with Regulation 44(1) of the Regulations under the Act.

In order to minimize rejections of these applications for amendments due to non-compliance, kindly take note of the following:-

1. The application submitted must be an original. No copies or faxes will be accepted
2. The applicant or signatory to the CoR 44 must attach an original certified copy of his/her ID
3. In the event that the proposed auditor is a juristic person, such juristic person must appoint a designated auditor who must be a natural person
4. Where the form requires the details of the "Office", such "office" must be reflected as e.g. "auditor" or "company secretary". It is incorrect to complete this section of the form by providing the physical address of an office
5. Due to the limited space available on the CoR 44 forms, companies are kindly requested to provide the address details of the auditor on an annexure to the form. Where such information is not provided, the business address will be used as an address of an auditor.

Yours sincerely

Mrs Astrid Ludin
Commissioner
..... December 2011

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No. R. 665

24 August 2012



Companies and Intellectual
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PRACTICE NOTE

DEAR VALUED CUSTOMER

In view of the increased number of requests received by CIPC for the amendment of e-mail addresses used for requesting and receiving password in relation to electronic requests for changes in directorship ("electronic CoR39"), and in an effort to improve our services offered to our customers, kindly take note that companies and their directors will from the date of this practice note, be able to effect such changes themselves.

However, in order to ensure that this added service is not misused, the following measures have been put in place, which will allow only persons who are duly authorized to effect such changes.

These measures are:-

1. the submission of an affidavit indicating:
 - the request to change the e-mail address as reflected on CIPC records
 - the previous e-mail address
 - the reason for the change of e-mail address
2. an original certified copy of the ID of the holder of the previous e-mail address
3. a certified copy of a resolution by the remaining directors in instances where the holder of the previous e-mail address is no longer a director of the company, which resolution should clearly state that the e-mail address should be changed, and the details of the new e-mail address.

The documents as listed here above must be submitted to cor39emails@cipc.co.za

In order to access these services, kindly visit our website at www.cipc.co.za. Log-in by using your customer log-in details. Under the **Companies Menu**, and the heading "**Directors Amendment**", go to the sub-heading "**Update Contact Details**".

We trust that you will find the above information in order and cooperation will be highly appreciated.

Yours sincerely

Mrs Astrid Ludin
COMMISSIONER
... December 2011

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No. R. 666

24 August 2012



Companies and Intellectual
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PRACTICE NOTE 1 OF 2012*IN TERMS OF***REGULATION 4 OF THE COMPANIES REGULATIONS, 2011****POSITION OF PRE-EXISTING COMPANIES ON THE ADOPTION OF A NEW MEMORANDUM OF INCORPORATION (MOI) OR THE AMENDMENT OF AN EXISTING MOI UNDER THE COMPANIES ACT, 2008 (THE ACT)**

1. A measure of uncertainty exists and different opinions are doing the rounds about the continued validity of the memoranda and articles of incorporation of companies that were incorporated or deemed to be incorporated under the repealed Companies Act (pre-existing companies).
2. The correct position is as follows:
 - 2.1 In terms of the definition of Memorandum" or "Memorandum of Incorporation" (Moi) in section 1 of the Companies Act, 2008, the memorandum and articles of incorporation of a pre-existing company is deemed to be its Moi for purposes of the said Act. No action is thus required by any pre-existing company to change its existing incorporation documents into a Moi.
 - 2.2 Item 4 (2) of the transitional provisions in Schedule 5 of the Act provides that for a period of two years after the Act has come into operation (i.e. from 1 May 2011), a pre-existing company may amend its Moi free of charge to bring it in harmony with the Act. Any provision in such a company's Moi which is in conflict with the Act may thus be amended without payment of any prescribed fee within this first two years. These amendments could be amendments to specific articles of the Moi or it could entail the adoption of a new Moi under the Act. The option to amend must be exercised by the company and there is no obligation to make any such amendment.
 - 2.3 Item 4 (4) of Schedule 5 of the Act contains the rules of interpretation should there be a conflict between a provision of an existing Moi and the Act. During the period of two years after the Act has come into operation, if there is such a conflict, the provisions of the Moi will override the Act unless the said Schedule 5 itself provides otherwise. A careful study of the other transitional provisions in Schedule 5 is, therefore, essential for a full understanding of this provision. It follows that every pre-existing company must exercise an option to amend or not

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and that there is no obligation on any such company to make any amendment. It further follows that after the two year period, if no amendment was made to remove a conflicting provision, the provisions of the Act will apply and the conflicting provision in the Mol will no longer have any legal force or effect.

3. The transitional arrangements as described above will apply automatically in respect of the Mol's of all pre-existing companies and it is only in those cases where a particular company requires some other arrangement to apply to it that an amendment of the Mol will be necessary. Typical examples where companies may want to create another arrangement would be the following:
 - 3.1 The existing Mol of a private or non-profit company requires that the annual financial statements of the company must be audited after the end of each financial year. An audit may in terms of the Act no longer be a requirement for the particular private or non-profit company but the Mol still requires it to be done. In terms of item 4 (4) of Schedule 5 the requirement of the Mol prevails and the annual financial statements will have to be audited unless the Mol is amended before the financial year end to remove that requirement. Companies must note that if the Mol requires an audit this requirement becomes effective once the company reaches its financial year end and that an amendment to remove this requirement must be done prior to the requirement becoming effective at the end of the financial year.
 - 3.2 The existing Mol of a private or non-profit company requires the company to hold an annual general meeting after the end of its financial year. The Act no longer contains such a requirement for private or non-profit companies but the Mol still requires it to be held. In terms of the transitional provisions the Mol prevails and the company must hold the meeting or amend its Mol to remove the requirement.
4. From the above it is evident that it is NOT COMPULSORY for any company to adopt a new Mol nor will the CIPC convert any existing Mol into a new Mol after 31 April 2013, the date on which the two year period expires. Every company must decide for itself whether it wants to amend its existing Mol or adopt a new Mol and every company should realise that after 30 April 2013 its existing Mol will continue to be of force and effect but only to the extent that it is not in conflict with the Act.



Mrs Astrid Ludin
COMMISSIONER
9 May 2012

No. R. 667

24 August 2012



Companies and Intellectual
Property Commission
a member of the dti group

PRACTICE NOTE 2 OF 2012**IN TERMS OF****REGULATION 4 OF THE COMPANIES REGULATIONS, 2011****INTERPRETATION AND APPLICATION OF SECTION 23 OF THE COMPANIES ACT, 2008, AND REGULATION 43 OF THE COMPANIES REGULATIONS, 2011 - SIBAKHULU CONSTRUCTION (PTY) LTD V WEDGEWOOD VILLAGE GOLF AND COUNTRY ESTATE (PTY) LTD**

1. Section 23 (3) of the Companies Act, 2008, requires every company and external company to -
 - “(a) continuously maintain at least one office in the Republic; and
 - (b) register the address of its office, or its principal office if it has more than one office –
 - (i) initially in the case of –
 - (aa) a company, by providing the required information on its Notice of Incorporation; or
 - (bb) an external company, by providing the required information when filing its registration in terms of subsection (1); and
 - (ii) subsequently, by filing a notice of change of registered office, together with the prescribed fee.”

A company or external company must, in terms of regulation 21, notify the CIPC of a change of registered office by filing Form CoR 21.1.


2. In a recent Western Cape High Court decision, **Sibakhulu Construction (Pty) Ltd v Wedgewood Village Golf and Country Estate (Pty) Ltd**, the provisions of section 23 of Companies Act, 2008, were considered. The matter involved concurrent applications for liquidation and business rescue and the Court considered the common law as the Companies Act, 2008, contains no specific provisions with regard to which High Court would have jurisdiction.
3. Judge Binns-Ward found that under the Companies Act, 2008, -
 - the place where the company's registered office is situated determines the identity of the court which has jurisdiction over the company (at least for purposes of winding up and business rescue proceedings in respect of that company);

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- a company's registered address must be the address of an office maintained by the company and not the office of a third party; and
 - if the company has more than one office, its "principal office" must be its registered office – with "principal office" denoting the place where the administrative business of the company is principally conducted.
4. The Judge further found that whereas the repealed Companies Act, 1973, expressly acknowledged the possibility of a distinction between a company's registered office and its main place of business, the Companies Act, 2008, requires the registered office and the principal place of business for jurisdictional purposes to be one and the same address.
5. This Practice Note does not express any opinion on the judgment but acknowledges the fact that the other High Courts may support and follow this judgment and, therefore, deems it in the general public interest to bring the implications thereof to the attention of all companies and advisors of companies, whether existing or still to be formed. The implications could be summarised as follows:
- the transitional provisions in Schedule 5 of the Companies Act, 2008, do not deal with the registered office of a pre-existing company and accordingly section 23(3) applies equally to pre-existing companies and companies incorporated under the Act;
 - companies should no longer use an address chosen for convenience as its registered office (e.g. the address of its auditors);
 - companies should ensure that CIPC's records reflect the registered office at the address where the administrative business of the company is conducted or, should they have more than one office, their principal office;
 - service of legal documents and process on the company (at the very least in respect of business rescue and winding up applications) should be at its registered office and not alternatively at its principal place of business, as currently provided for by Rule 4 of the Uniform Rules of Court.
6. Companies may notify the CIPC of any change their registered office by filing a Notice of Change of Registered Office on Form CoR 21.1 in terms of section 23 (3) (b) of the Act. There is no fee payable for any such filing.



Mrs Astrid Ludin
COMMISSIONER
30 April 2012
