



CENTRIQ

INSURANCE INNOVATION

UPDATE ON REGULATORY STATUS

| COMPANIES ACT 2008 | |
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| UPDATE | <p>The purpose of the Companies Act as emphasised by the Department of Trade and Industry is to introduce legislation that promotes simplification, flexibility, corporate efficiency, transparency and predictable regulation. Further, a need for legislation to be appropriate to the legal, economic and social context of South Africa was identified.</p> |
| LEGAL STATUS / REGULATIONS | <p>The Companies Amendment Act No.3 of 2011 was assented by the presidency and was published in Government Gazette 34243 on 26 April 2011. This Amendment Act needs to be read together with the Companies Act No 71 of 2008 as no consolidated version is available yet. The Minister of Trade and Industry has in terms of Section 223 and Item 14 of Schedule 5 of the Companies Act published the Companies Regulations. This regulation will take effect on 1 May 2011, at the same time that the Companies Act No 71 of 2008 takes effect.</p> <p>Pre-existing companies will continue to exist after the effective date as a company, as if it had been incorporated and registered in terms of the New Act, with the same name and registration number previously assigned to it.</p> <p>Under the New Act, the memorandum and articles of association are replaced with a single document to be known as the 'memorandum of incorporation' ("MOI"). Each provision of a company's MOI must be consistent with the New Act, and, subject to certain exceptions, is void to the extent that it contravenes or is inconsistent with the New Act.</p> <p>In terms of the transitional arrangements under the New Act, a pre-existing company has a period of two years to file, without charge, a notice of amendment to its constitutional documents to bring them in harmony with the provisions of the New Act. During that two year transitional period, if there is any conflict between the New Act and a pre-existing company's constitutional documents, the latter will prevail, except in regard to the following matters which took effect on the effective date: the duties, conduct and liability of directors; the rights of shareholders to receive any notice or have access to any information; meetings of shareholders and directors, and adoption of resolutions; fundamental transactions, takeovers and offers.</p> <p>The New Act specifically recognizes shareholders agreements. In terms of section 15(7) of the New Act, shareholders of a company may enter into any agreement with one another concerning any matter relating to the company, but such agreement must be consistent with the New Act and the company's MOI. Any provision which is inconsistent with the New Act or the company's MOI will be void to the extent of the inconsistency.</p> <p>In terms of the transitional arrangements, however, a shareholders agreement adopted by shareholders of a pre-existing company before the effective date will continue to have the same force and effect despite section 15(7) -</p> <ul style="list-style-type: none"> • for a period of two years after the effective date or until changed by the shareholders who are parties to the agreement; and • after the two year period, to the extent that it is consistent with the New Act and the company's MOI. <p>Accordingly, during the transitional two year period, if there is any conflict between the provisions of an existing shareholders agreement and the provisions of the New Act or the company's MOI, the shareholders agreement will prevail.</p> <p>Notwithstanding the transitional period, certain matters are governed by the New Act from the effective date and the extent of their application will need to be considered in light of the provisions of a pre-existing company's constitutional documents.</p> |
| DATE ASSENTED BY THE PRESIDENT | Assented by the President on 26 April 2011. |
| EFFECTIVE DATES | The Act came into effect on 1 May 2011. |