

CHIEF REGISTRAR'S CIRCULAR NO. 6 OF 2011

COMPANIES ACT, 2008 (ACT 71 OF 2008), AS AMENDED BY THE COMPANIES AMENDMENT ACT, 2011 (ACT 3 OF 2011)

1. COMMENCEMENT OF THE ACT

The Companies Act, 2008 (Act 71 of 2008) ("the Act"), as amended by the Companies Amendment Act, 2011 (Act 3 of 2011), came into operation on 01 May 2011, except for section 11(1)(a)(ii) and (iii) that will come into operation on 30 April 2014 (see *Government Gazette* No. 34243 dated 20 April 2011, together with Proclamation No. R.32 of 2011 in *Government Gazette* No. 34239 dated 26 April 2011).

2. PURPOSE OF THE ACT

The purpose of the Act, amongst other things, is to provide for the incorporation, registration, organisation and management of companies; to provide for equitable and efficient amalgamations, mergers and takeovers of companies; to repeal the Companies Act, 1973 (Act 61 of 1973); to make amendments to the Close Corporations Act, 1984 (Act 69 of 1984); and to provide for matters connected therewith.

3. IMPACT OF CERTAIN PROVISIONS OF THE ACT ON DEEDS REGISTRATION PROCEDURES

3.1. Criteria for names of companies:

3.1.1. Section 11(3) of the Act provides that:

3.1.1.1. if the name of a profit company is the company's registration number, that number must be immediately followed by the expression "(South Africa)" (section 11(3)(a) of the Act);

3.1.1.2. if the company's Memorandum of Incorporation includes any provision contemplated in section 15(2)(b) or (c) restricting or prohibiting the amendment of any particular provision of the Memorandum, the name must be immediately followed by the expression "(RF)" (section 11(3)(b));

3.1.2. A company name must, in terms of section 11(3)(c) of the Act, irrespective of its form or language, end with one of the following expressions, as appropriate for the category of the particular company:

- 3.1.2.1. the word "Incorporated" or its abbreviation "Inc." in the case of a personal liability company;
- 3.1.2.2. the expression "Proprietary Limited" or its abbreviation, "(Pty) Ltd.", in the case of a private company;
- 3.1.2.3. the word "Limited" or its abbreviation, "Ltd.", in the case of a public company;
- 3.1.2.4. the expression "SOC Ltd.", in the case of a state-owned company;
- 3.1.2.5. the expression "NPC", in the case of a non-profit company.

3.1.3. The above-mentioned changes are deemed to have been effective as from the coming into operation of the Act (Schedule 5, Item 2 and 4). Therefore, unless dealing with a deed that needs to be updated regarding a change of name in the above-mentioned regard, a company is not compelled to lodge an application for a change of name.

3.1.4. Where a company wishes to register a mortgage bond or a transfer of property, etc. then the 'new' bond / 'new' deed of transfer, etc. must reflect the new name of the company, as well as the new name of the companies that are referred to in the conditions of the mortgage bond / title deed, etc. (for instance names of Home Owner Associations). This amendment must be effected without the lodgement of an application for a change of name of the company (or change of name of the companies referred to in the mortgage bond / title deed, etc. conditions).

3.1.5. Deeds examiners must, in instances referred to in par. 3.1.4 supra, cause a **factual endorsement** on the 'old' or existing deed (deed not cancelled / transferred) in order for such deed/bond to be updated regarding the change of name. An endorsement in this regard may be on the following lines:

**Change of name of Company in terms of the provisions of the Companies Act, 2008
(Act 71 of 2008)**

* The name of the within-mentioned transferee / mortgagor company has, in terms of section 11(3) of the Companies Act 71 of 2008, changed to **..... /

* The name of the company referred to in * condition / paragraph has, in terms of section 11(3) of the Companies Act 71 of 2008, changed to

.....
Date

.....
Registrar of Deeds

* Omit which is not applicable
** Insert name of company

3.2. Issuing of registration certificate and changing / amendment of company's name:

- 3.2.1. The Commission ("Companies and Intellectual Property Commission established by section 185 of the Act") must, after accepting Notice of Incorporation in terms of section 13(1) or an application for the domestication of a foreign company in terms of section 13(5) of the Act, issue to a company a **registration certificate** in the prescribed form (section 14(1)(b)(iii)).
- 3.2.2. If the name of a company, as entered on the Notice of Incorporation, fails to satisfy the requirements of section 11(3) (see par.3 supra), the Commission may alter the name and issue and deliver to the company an **amended registration certificate** showing the amended name of the company (section 14(2)(a) and 14(2)(bb)).
- 3.2.3. Section 16 of the Act provides for a company's Memorandum of Incorporation to be amended. Such an amendment may, in terms of section 16(5)(b)(i), take the form of changing the company's name.
- 3.2.4. If a company's amendment to its Memorandum of Incorporation includes a change of the company's name, the provisions of section 14(2), read with the changes required by the context, apply afresh and the Commission must issue to the company an **amended registration certificate** (section 16(8) of the Act).
- 3.2.5. An amendment to a Memorandum of Incorporation (in the case of an amendment that changes the name of a company) takes effect on the date set out in the **amended registration certificate** issued by the Commission in terms of section 16(8), read with section 14(1)(b)(iii).

3.3. Endorsement of deed to reflect a change of name of a company

- 3.3.1. The Act places no burden on the Registrar of Deeds to endorse deeds and documents regarding a change of name of a company.
- 3.3.2. A change of name of a company (affected after 1 May 2011 in terms of the provisions of the Act) must now be recorded in deeds and documents in terms of section 93 of the Deeds Registries Act, 1937 (Act 47 of 1937). A section 93 application must be lodged together with proof of the change of name of a company in the form of an amended registration certificate issued in terms of section 14 or section 16 of the Act.
- 3.3.3. The status quo remains regarding the endorsement of deeds and documents to reflect a change of name of a company, affected prior to 1 May 2011 in terms of the repealed Companies Act 61 of 1973.

3.4. Conversion of close corporations to companies:

- 3.4.1. Upon conversion of a close corporation to a company, the Commissioner must “enable the Registrar of Deeds to effect the necessary changes resulting from conversions and name changes.” (Schedule 2, Item 1(4)(c)).
- 3.4.2. Although the Act is silent on the lodgement of an application and the relevant title deed/s, the endorsement of a title deed to reflect a conversion of a company must be given effect to only when an application, together with proof of the conversion and the relevant title deed/s have been lodged.
- 3.4.3. Relevant deed/s must be endorsed along the following lines:

Endorsement in terms of section 3(1)(v) of Act 47 of 1937

The within close corporation has been converted, in terms of the provisions of the Companies Act, 2008 (Act 71 of 2008) into a *..... company and is now known as ** (registration number).

.....
Date

.....
Registrar of Deeds

- * Insert type of company
** Insert name of company

3.5. Conversion (applied for before 1 May 2011) of company to close corporation

The Act does not provide for the conversion of a company into a close corporation. However, any conversion of a company to a close corporation, applied for in terms of section 27 of Act 69 of 1984 and filed with the Registrar of Companies before 1 May 2011 and not fully addressed at that time, must be concluded by such Registrar in terms of Act 69 of 1984 (Schedule 5, Item 3(2)).

Although registered under the provisions of Act 69 of 1884, such company shall be regarded as a pre-registered company for all purposes of the Act (Schedule 5, Item 3(3)).

3.6. Implementation of amalgamation or merger of companies

- 3.6.1. Where property has to be transferred from an amalgamating or merging company to an amalgamated or merged company as a consequence of an amalgamation or merger, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient proof for the registrar of deeds to effect transfer of the registration of that property (section 116(8) of the Act).
- 3.6.2. Although the Act is silent in this regard, an endorsement by the Registrar of Deeds to effect transfer of property, as provided for in section 116(8) of the Act,

must be effected only on the lodgement of an application together with a copy of the amalgamation or merger and a copy of the filed notice of amalgamation or merger, and the relevant title deed/s.

3.6.3. Relevant deed/s must be endorsed along the following lines:

Endorsement in terms of section 3(1)(v) of Act 47 of 1937

The within company has amalgamated / merged with company
(registration number), in terms of section 116 of the Companies Act,
2008 (Act 11 of 2008), and is now known as (registration number
.....).

Date

Registrar of Deeds

*Insert name of company

3.7. Registration of external Companies

3.7.1. **“External company”**, in terms of section 1 of the Act, *‘means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23 (2)’*.

3.7.2. An external company must register with the Commission to conduct business or non-profit activities, as the case may be, within the Republic as an external non-profit company or as an external profit company (section 23(1)).

3.7.3. The Commission must, in terms of section 23(5)(a), assign a unique registration number to each external company that has registered in accordance with section 23(1) of the Act.

3.7.4. Section 23, in effect, means that an external company must be registered as an external non-profit company or an external profit company, prior to it being able to have mortgage / notarial bonds registered in its favour.

3.8. OFFICE FEES

The Office Fee as prescribed in Item 1(d) of the Schedule of Fees of Office in Regulation 84 of Act 47 of 1937, is payable in respect of an endorsement referred to in par. 3.3 to par. 3.6.


CHIEF REGISTRAR OF DEEDS
DATE: 24 JUNE 2011

REFERENCE: A.1/3/1/213
RINGBINDER 15

CHIEF REGISTRAR OF DEEDS
REGISTRARS OF DEEDS
DEEDS TRAINING

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