

# Talking Companies

## Impact on Existing Companies

Over 400 000 existing companies will be affected when the Companies Act 2008 comes into operation.

Certain provisions of the Act will apply immediately to existing companies, such as the:

- automatic conversion of an existing company into a type contemplated in the Act;
- standards of conduct of directors;
- enhanced accountability and transparency requirements;
- rights of shareholders to receive notices or have access to information;
- rules and procedures applicable to "fundamental" and "affected" transactions;
- business rescue procedures.

Other provisions of the Act will be phased in, allowing existing companies time to become compliant with the new requirements – examples are:

- The Memorandum of Incorporation ("MOI"), formerly the Articles of Association, must be consistent with the provisions of the Act and existing companies will have two years to comply with this requirement. Actions of companies in the intervening period, consistent with their existing MOI, will not result in administrative actions being taken, or the issue of compliance notices, against these companies.
- Shareholders' Agreements must be consistent with the Act and the MOI and existing companies will also have two years to comply. Shareholders of an existing company wishing to act in terms of a shareholders' agreement already in effect, but which is not consistent with the Act or the MOI in this two-period will have to file a "Notice of Shareholders' Agreement".
- The Act preserves the rights attaching to shares of companies which have been issued, but removes the distinction between par value and no par value shares. Existing companies with par value shares will have time in which to convert these shares into shares having no par value.



The Act will not affect actions taken or commenced under the Companies Act 1973, before the new Act comes into operation, such as:

- Any applications to reserve a company name or to form a company will proceed uninterrupted.
- Any legal action instituted by or against an existing company will continue.
- Any right or entitlement enjoyed by, or obligation imposed on, any person that has not been spent or fulfilled will not be amended.
- Notices given, documents served or orders made will remain valid.

Any company rules (ie "any necessary or incidental rules relating to the governance of the company") will also continue to be binding on the company.

Finally, the winding-up of all companies on the grounds of insolvency will continue to be governed by Chapter 14 of the Companies Act 1973. Chapter 14 of the previous Act will not be repealed until the Minister is satisfied that alternative legislation has been promulgated.

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