

Talking Companies

How to form a company

The Companies Act 2008 has attempted to simplify the manner in which a company is formed. Furthermore the Act empowers the Commission to establish a system using electronic communication to facilitate the registration of companies.

A single person, or his proxy can form a Profit Company. Three or more persons are required to form a Non-profit or Public Company.

Formation is achieved by:

- Completing and signing a Memorandum of Incorporation ("MoI"); and
- Filing a Notice of Incorporation ("NoI") with the Companies Commission. The NoI, must be lodged together with a copy of the company's MoI and the prescribed fee, of R100 if the company only adopts the mandatory MoI clauses or, R350 where additional optional clauses are included. The prescribed fee is reduced by any amount paid to reserve the company's name.

If the company's MoI contains:

- any special condition and requires that clause to be amended other than by way of a special resolution or;
- entrenches any provision of the MoI,

then the NoI must include a prominent statement drawing attention to the special condition or entrenched provision, and its location in the MoI, since persons dealing with the company will be deemed to have constructive notice thereof.

The Commission:

May reject a NoI if it is incomplete or improperly completed. However, a mere deviation from the prescribed form does not invalidate the NoI unless the deviation affects the substance of the NoI or would reasonably mislead the reader.

Must reject a NoI if:

- The required number of directors are not present; or
- Any directors are disqualified to act as a director, and the remaining number of directors is fewer than required.



If the NoI is acceptable, the Commission must:

- Assign the company a unique Registration Number;
- Endorse the NoI;
- Issue and deliver the company with a Registration Certificate, which is conclusive evidence of:
 - Compliance with all the requirements for incorporation of the company; and
 - Incorporation of the company from the date and time stated in the Registration Certificate.

Subsequent to incorporation, a company is a juristic person which continues to exist until its name is removed from the list of registered companies held at the Companies and Intellectual Property Registration Office (CIPRO). A company has all the powers of an individual except to the extent that:

- A juristic person is incapable of exercising such power; or
- The company's MoI provides otherwise.

The MoI replaces the articles of association of the company. Existing companies will in the future have to ensure that their current documents are consistent with the Act.

The reservation and allocation of company names and the nature and content of the MoI will be dealt with in future newsletters.

Contact Information

Horwath in Southern Africa (Pty) Ltd
Editor: Edwin Selbst
Tel: +27 11 217 8000
Email: edwin.selbst@horwath.co.za

Johannesburg

Horwath Leveton Boner
Tel: +27 11 217 8000
Email: info@horwath.co.za

Cape Town

Horwath Zeller Karro
Tel: +27 21 481 7000
Email: hzk@horwath.co.za

Durban

Horwath Mahomed
Omar Paruk
Tel: +27 31 337 3311
Tel: +27 32 551 1111 (Stanger)
Email: hmop@horwath.co.za

Botswana

Horwath Gurugroup
Tel: +267 391 2805
Email: guru@gurugroup.bw

Compiled by Graeme Fraser and Veldra Morris - www.companiesactonline.co.za in association with Horwath in Southern Africa (Pty) Ltd. The advice contained in these newsletters is of general application and is not intended to be legal advice.

