



Companies and Intellectual  
Property Commission

a member of the dti group

## GUIDANCE NOTE 1 OF 2013

### AMENDMENT OF CORPORATE CONSTITUTIONS (MEMORANDUM AND ARTICLES OF ASSOCIATION) BEFORE EXPIRY DATE OF TRANSITIONAL ARRANGEMENTS UNDER COMPANIES ACT, 2008.

Schedule 5 of the 2008 Companies Act (Act No. 71 of 2008) makes provision for the transitional arrangements:

1. Amongst other things, it provides that in the event of the provisions of the Memorandum and Articles of the pre-existing company being inconsistent with the Act, those provisions of the Memorandum and Articles take precedence over the Act (Item 4(4)(a)(i) of Sch. 5). It further provides that the provisions of the Company Rules and Shareholders' Agreements of a pre-existing company which are inconsistent with the Act take precedence (Item 4(4) (a)(ii) and (iii) of Sch. 5). However, this is only effective for a period of two years from the date of the effective implementation of the Act, being 1 May 2011.
2. This transitional period is coming to an end on 30 April 2013, from which date every company's Memorandum and Articles of Association, Company Rules and Shareholders' agreements are expected to be subject to the provisions of the 2008 Companies Act, regardless of any contrary provisions in such pre-existing corporate documents, including the Memorandum and Articles of Association.
3. Prior to the expiry period of the transitional arrangements, companies that have still not aligned their corporate documents (i.e. Memorandum and Articles of Association, Shareholders Agreements and Company Rules) to the new Companies Act and the Memorandum of Incorporation run the risk of being subjected to the position reflected in their said corporate documents in the case of a conflict between the provisions of their pre-existing corporate documents and the Companies Act, regardless of the fact that the relevant provisions under the pre-existing constitution may be unfavorable as compared with the position under the new Companies Act.

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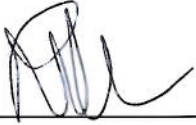
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Companies are therefore advised to timeously submit any amendments to their corporate constitutions (Memorandum and Articles of Association) in order to avoid prejudices that might arise as a result of high volumes.



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**Adv Rory Voller**

**DEPUTY COMMISSIONER**

**8-MARCH 2013**