



GUIDANCE NOTE 1 OF 2011 COMPANIES ACT 71 OF 2008 REGISTRATION OF COMPANIES

This guidance note is issued in terms of 4 of the Companies Regulation, 2011 and is applicable to companies. This practice note refers to the requirements as set forth in:

- Section 65 of the Companies Act, 2008; and
- Section 41 of the Companies Amendment Bill, 2010

There is some uncertainty regarding the transitional arrangements regarding registration of special resolutions after the new Companies Act, 2008, becomes effective on 1 May 2011. In many cases the new Act does not require the registration with the CIPC of a special resolution for it to be legal and binding on the company and consequently the resolution becomes effective when passed and there is no need to file the resolution.

In cases where the Act requires a special resolution to be passed and filed with the CIPC, such as a change of name, the special resolution must be filed under cover of the appropriate COR Form for registration. Section 65 (11) of the Act contains a summary of all matters requiring the passing of a special resolution with an appropriate cross reference to the section in the Act concerned (Please note that this section has been extensively amended by the Companies Amendment Act, 2011, in order to provide a comprehensive list).

For purposes of the transition from the old to the new Act, the following guidelines would apply when lodging special resolutions:

- Special resolutions passed in terms of the Companies Act, 1973, but not submitted for registration prior to the effective date of the new Act, may still be lodged for registration, provided that it is done under cover of the new COR forms (whichever is applicable);
- Registration of special resolutions which are no longer required under the new Act, but essential for companies to proceed with certain activities, may still be lodged for registration by the CIPC, provided that it is submitted under cover of a letter by the company and/or its authorized representative, requesting registration and explaining the reasons for the necessity.
- In cases where notice of a meeting at which a special resolution is to be passed has been given before the effective date of the new Act, but the resolution is only passed after the effective date of the Act, such special resolutions must be filed in compliance with the new Companies Act, and under cover of the new forms applicable.

Yours faithfully,

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Date: 6./1./2011

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