



COMPANIES AND INTELLECTUAL
PROPERTY REGISTRATION OFFICE

a member of the dti group

"GATEWAY TO FORMAL ECONOMIC PARTICIPATION"

PRACTICE NOTE NO.1 OF 2009

EXTERNAL COMPANIES AND SECTION 21A COMPANIES & ASSOCIATIONS

General rule:

The general rule under the Companies Act, 1973, is that all foreign companies and associations that have established a place of business in South Africa must register as external companies under section 322. This type of registration requires the registration of a certified copy of the memorandum of the foreign company as registered in the foreign jurisdiction as well as the other documents listed in the said section 322 and regulation 33 of the Companies Administrative Regulations. No new entity is created through this registration.

Exception:

The only exception to this general rule is when a foreign company or association that is a non profit organisation in the foreign jurisdiction elects to rather register a branch of that company or association in South Africa under 21A of the Act. This section provides for the incorporation of such a branch under section 21 of the Act which means that a new company is registered in South Africa according to the requirements of section 21, i.e. requiring a new memorandum and articles of association and all other documents for the registration of an association not for gain listed under section 21 and regulation 20 of the Companies Administrative Regulations. The only further requirements set by CIPRO for registration of such a branch is that the object clause in the memorandum should confirm that the main object of the new company corresponds with the main object of the foreign company or association concerned and that the requirements of section 21A (b) (ii) must be included in the said memorandum as a condition.

It follows that registration under section 21A is an optional or alternative registration process for certain foreign companies or associations wishing to operate in South Africa and that should this route not be followed compulsory registration as an external company under section 322 is required.

These are different types of registrations with different requirements and consequences and applicants for registration should clearly indicate the type of registration required.

Use of “Incorporated in” in the name:

The requirements for the use of the name of companies or associations registered under section 21A are not clearly set out in the Act. As section 21A (3) categorically states that the provisions of the Act relating to external companies do not apply to companies or associations registered under section 21A, the statement “Incorporated in

Membership requirements:

Membership requirements are also not specifically dealt with in the Act. It is submitted that, having to be registered under section 21 and in the absence of any specific provision allowing otherwise, there must be at least seven (7) subscribers. Membership should ideally be the same as that of the foreign company but this could be arranged after incorporation.

There is also room within the framework of section 66 of the Act for the interpretation that the branch company could be regarded as a wholly owned subsidiary of the foreign company and sole membership could then also be arranged in this regard after incorporation with seven (7) subscribers.

Sincerely,



Mr. Keith W. Sendwe
Chief Executive Officer

14/05/2009