GUIDANCE ON APPLICATION OF PRACTICE NOTE 1 OF 2019

This notice serves to provide guidance on the intention and applicability of Practice Note 1 of 2019.

The rationale behind Practice Note 1 of 2019 is to alleviate the occurrence of unauthorized changes in the board composition of a company and resulting objections and disputes. Any changes to the board of directors, must be done in strict compliance to the Companies Act requirements and the relevant company's MOI.

Practice Note 1 of 2019 is applicable only to changes in the board composition and must be read with this notice and other relevant notices pertaining to appointment, resignation and/or removal of directors.

Section 66 of the Act provides that the business and affairs of the company must be managed by or under the direction of its board. Section 66(4) provides for the appointment and election of directors to the board. A company's MOI must provide for the election by shareholders of 50% of the directors of that company.

The process for filling vacancies on the board and the process for removal of directors is governed by Sections 70 and 71 of the Act, respectively.

Each section of the Act relating to directors and the board prescribes its own requirements with regards to the process of filling vacancies, removing directors and appointing or electing new directors.

Generally the noting of resignation, appointment or removal of a director is taken in meetings, which need to adhere to quorum requirements. An attendance register and /or minutes of the meeting and resolution, signed off by the directors in attendance and the Chairperson is sufficient proof of the decisions made and that all relevant parties are aware thereof. In the event that an extract minutes is submitted and the company has a registered company secretary, the company secretary may also sign in the place of the Chairperson.

However, where a noting took place or a decision was made (if applicable) other than at a meeting (round robin), all directors excluding the resigned director must sign the resolution. With regards to appointed or elected directors, same must sign the resolution together with the existing directors.

Yours sincerely,

Adv. R. Voller
CIPC COMMISSIONER

26/3/2019