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PRACTICE NOTE NO 7 OF 2011

RESTORATION BY CREDIT OR FOR LITIGATION PURPOSES WHERE DE-REGISTERED DUE TO ANNUAL RETURN NON-COMPLIANCE

Dear Customer

Please note that in cases where an entity was finally de-registered due to annual return non-compliance and a creditor files a civil summons in order to institute legal proceedings against the entity, the creditor will be required to apply for the restoration of that entity in order to proceed with legal action. Upon restoration the status of the entity is changed from "final de-registration" to "in de-registration process".

In this instance, the standard restoration procedure as per section 73(6A) of the Companies Act and section 26(6) of the Close Corporation Act does not have to be followed (i.e. the lodgment of outstanding annual returns) because:

- It is not reasonable to expect a creditor to pay the annual returns of an entity which it wishes to take legal action against since the Companies and Close Corporation Acts require the entity itself to lodge annual returns; and
- The creditor is not in a position to provide the details of the entity as is required on the annual return.

However, as part of control measures, creditors are required to submit copies of the issued summons against the entity simultaneously with the restoration application.

The referral for "de-registration" and "final de-registration" is an automated process and therefore no manual intervention can be made to stop the referral. In order to ensure that an entity is not referred for "final de-registration" again, a creditor needs to follow up on a continuous basis with CIPRO regarding the status of the entity. If there are any queries, please contact CIPRO at annualreturns@cipro.gov.za.

Yours sincerely


Mr Lungile Dukwana

Acting Chief Executive Officer

Date: 3/2/2011.....