

CIPC

Overcoming regulatory burden and compliance for business owners to unlock their potential.

Companies Act 2008

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5/8/2015



Companies and Intellectual
Property Commission

a member of **the dti** group

AGENDA

- Speaker profile
- Brief overview of the CIPC
- CIPCs Mandate
- CIPCs Corporate Compliance function
- Ease of doing Business and Registrations
- Brief overview on the major changes and effects Companies Act 2008
- Questions
- Short Discussion

THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)

- The Commission is a juristic person, and mandated by the Companies Act, 2008(Act 71 of 2008).
- The Commission as per section 186 and 187 of the Act have various functions to accomplish, and further help foster a business environment that is competent and efficient and also to provide access to services to all.
- The Commission is responsible for Registration of Companies, Co-operatives and IP Rights and maintenance thereof and also has a Promotion of education and awareness of Company and IP Law function, together with the Promotion of compliance with relevant legislation function.

ABOUT REGISTERING A BUSINESS

- CIPC registers Companies and Co-operatives.
- It is not necessary for all businesses to formalise by registering with the CIPC. For some businesses, such as informal businesses and sole proprietors, there may not be sufficient benefits.
- In terms of the Companies Act, 2008, a company may be registered with or without a company name.

OUR COMPLIANCE ROLE

- In order to ensure that the Commission achieves its mandate regarding corporate compliance. **The Corporate Compliance Unit** utilizes the following legal and compliance tools:
 - a. Non-binding Advisory opinions - Section 188(2) enables the CIPC to promote public awareness of company and IP matters by providing guidance to the public by "issuing explanatory notices outlining its procedures or its non-binding opinion on the interpretation of any provision of the Act
 - b. Clarifications
 - c. Workshops/ Seminars
 - d. Corporate Legal Compliance Programs
 - d. Information disseminations (practice notes, brochures, guidelines)

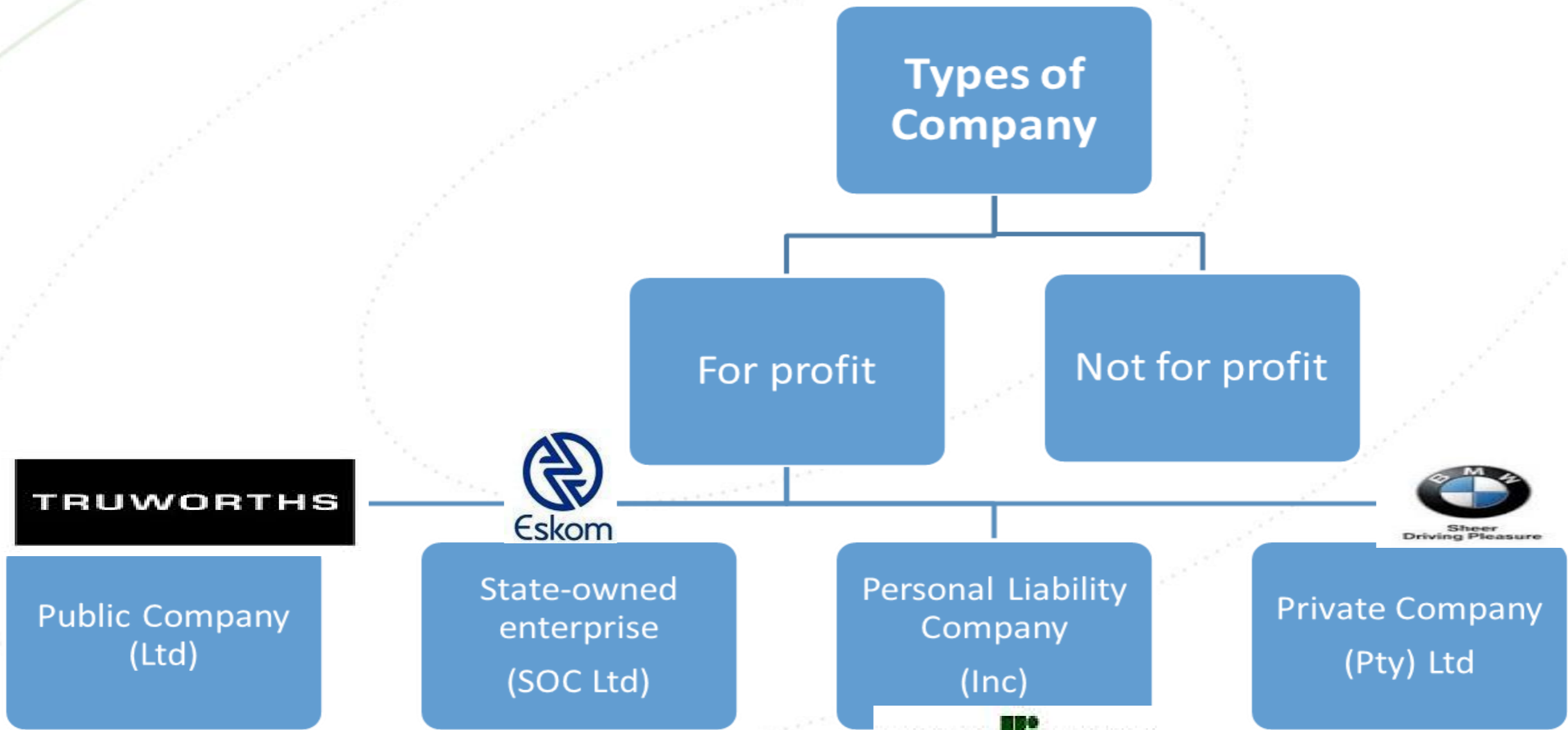
COMPANIES ACT 2008

- Before its repeal, the 1973 Act was subject to scrutiny and many amendments occurred every year since its enactment.
- The ultimate goal of the reform was to ensure that the regulatory framework for enterprises promoted “growth, employment, innovation, stability, good governance, confidence and international competitiveness.”
- Then 2008 Act (as amended) finally came into operation on 1 May 2011

CHANGES

- The Act has been simplified for better understanding and application:
- Keep familiar language in order to ensure consistency.
- It has been harmonized with other legislation such as Access to Information Act ,ECT Act etc.
- Puts emphasis on transparency and accountability of companies;
- Reduction of regulatory burden
- ***Companies Tribunal (“Tribunal”)***, which is the only new regulatory agency.

COMPANIES AT A GLANCE



Eskom

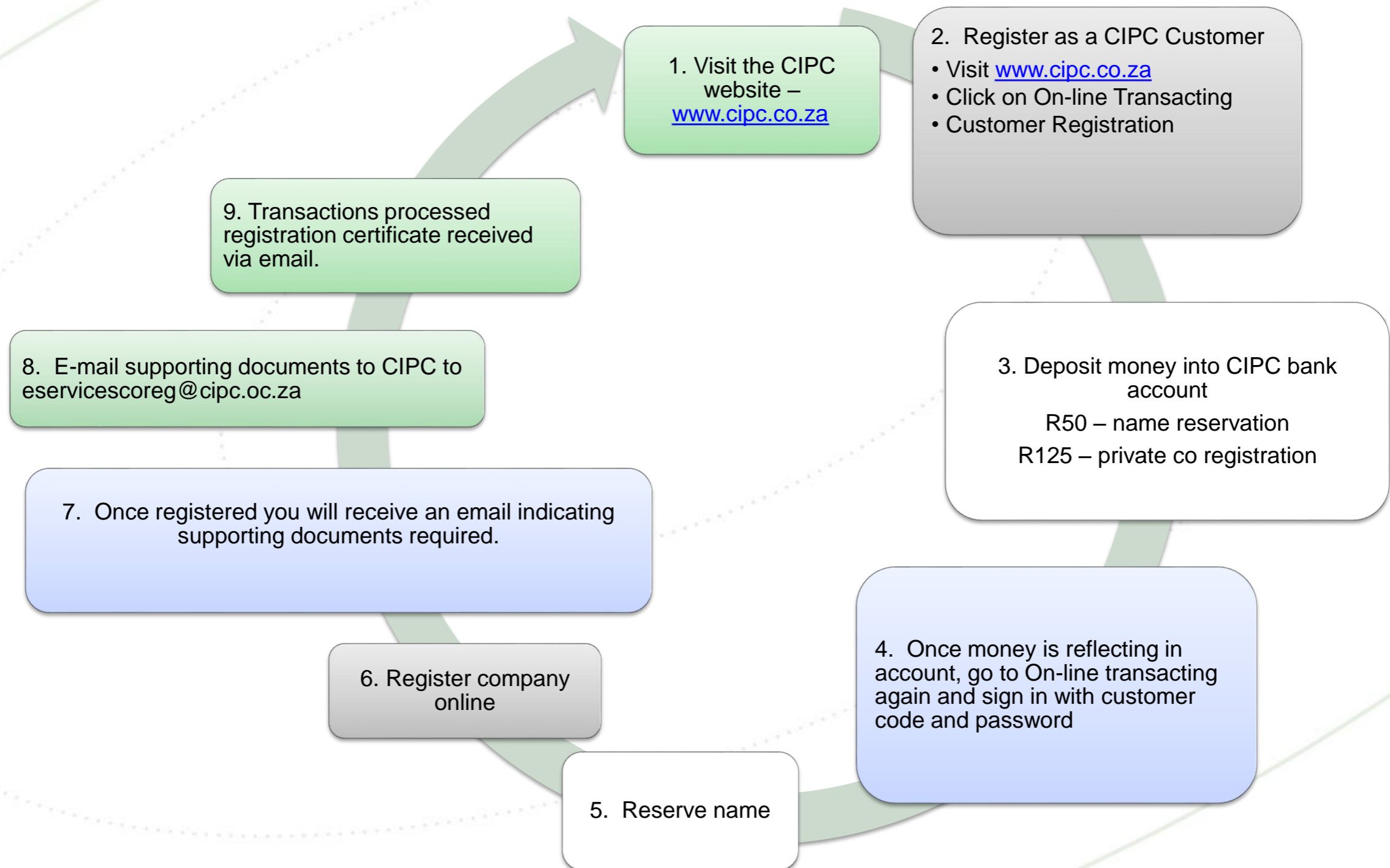


BMW
Sheer Driving Pleasure

EASE OF DOING BUSINESS



STEPS TO REGISTER A COMPANY



NAMES

This Act retains the broad outlines of the existing regime for company names, in particular continuing the practice of name reservation, but not making name mandatory.

Name reservation form – **CoR 9.1** – for four/4 alternate names

R50 – electronically submitted to Commission/R30 for extension

R75 – Manually submitted to Commission/R50 for extension

Names are allowed to be transferred from applicant to other persons

Business/Trading names to be registered under the Consumer Protection Act

Defensive name reservation process retained

If a proposed name is rejected, then the registration number becomes the name of the company

THE FUTURE OF CLOSE CORPORATIONS

No new close corporations may be registered after the implementation of the Companies Act, 71 of 2008 -

22 December 2011 was cut off date

Existing close corporations –are free to retain their current status until such time as their members may determine that it is in their interest to convert to a company or deregister the CC

Close corporations must prepare financial statements 6 months after financial year end

Conversion-Close corporations to Private Company-No fee charged for the first three years-May 2011-May 2014. Hereafter a fee is payable.

INCORPORATION OF A COMPANY

A company will be “incorporated” when the requirements of the Companies Act 2008 have been met, namely:

Memorandum of Incorporation (MOI) is drafted, and

The MOI and a **Notice of Incorporation** with the Companies and Intellectual Property Commission (CIPC)

Then the CIPC:

provides the company with a unique registration number

Enters the company information in the Companies Register, and

Issues the company with a **registration certificate**

THE MOI

Like the Constitution of a company

Can accommodate very simple company structures, or very complex structures

Types of provisions in Memoranda of Incorporation:

- Objects of the company
- Restrictions and limitations on the powers of the company
- Composition of the board of directors
- Election and removal of directors
- Frequency of board or shareholders meetings
- Powers and restrictions of directors and shareholders
- Voting rights of shareholders
- Specific audit requirements
- Procedures for amendment of the MOI

ANNUAL RETURNS

All companies and CCs are required by law to file their annual returns with the CIPC on an annual basis, within a prescribed time period.

The purpose for the filing is to confirm whether a company or CC is still in business/trading.

If annual returns are not filed within the prescribed time period, the assumption is the company or CC is inactive, and CIPC will then start the deregistration process of the entity.

Annual returns can only be filed electronically via the provided application on the CIPC website

Step 1: Register as a customer on the CIPC website. Go to www.cipc.co.za / Register as a Customer.

Step 2: Calculate the annual return fee.

Step 3: Deposit the relevant filing fee. The fees can be deposit at any ABSA bank or via EFT

Step 4: File annual returns via the CIPC website.

Step 5: File the appropriate amendment forms e.g. CK2/CK2A/CoR39/CoR21.1

ANNUAL RETURNS FEE STRUCTURE

Annual Turnover	Filing within 30 business days after anniversary date	Filing more than 30 business days after anniversary date
Less than R1 million	R100	R150
R1 million but less than R10 million	R450	R600
R10 million but less than R25 million	R2000	R2500
R25 million or more	R3000	R4000

DEREGISTRATION DUE TO NON-COMPLIANCE OF ANNUAL RETURNS

A business may be referred for deregistration:

- Upon application by any party subject to section 82(3)(b)(ii)

If annual returns are outstanding for more than 2 successive years

If the Commission believes that the company/close corporation has been inactive for 7 years

Notification of pending deregistration is sent to defaulting companies and CCs.

Done in terms of Section 82(3) of Companies Act & Regulation 40

RE-INSTATEMENT OF ENTITIES

May be re-instated after it was de-registered

Lodging of a Notice of Re-instatement (form CoR40.5) and other supporting documents .
Fee:- R200.00

All outstanding annual returns must be lodged for the re-instatement to become effective.

Ground for re-instatement by business itself:

Proof that it was in business at time of being finally deregistered

Proof that it has immovable property.

For more information on annual returns log on to www.cipc.co.za

- ✓ Refer to Step-by-step online filing guide
- ✓ Various notices

Done in terms of **Section 82(4) of Companies Act & Regulation 40**



A NOTE ON DIRECTORS

- Number of provisions which impose personal liability on directors.
- **Section 77** for a full list of circumstances in which a director will be held liable for any loss suffered by the company
- A director faces much greater personal financial risk under the Act
- Greater accountability by directors for corporate wrongdoings by providing all stakeholders with new and expanded remedies against disorderly directors.
- The punishment must be a meaningful deterrent and be capable of being enforced. Criminal sanctions for contraventions of the 1973 Act proved to be ineffective, so they have been almost entirely replaced by financial sanctions except for the most serious offences

ENFORCEMENT

- The Act decriminalizes company law. There are very few remaining offences.
- Generally, the Act uses a system of administrative enforcement in place of criminal sanctions to ensure compliance with the Act.
- Complaints procedure is the new way arising from the new Act.

CONCLUSION

- The majority of the private sector in every first world country conducts its business operations through the vehicle of a formal entity.
- Company law has a direct impact on the manner in which both local and global business is transacted. It is therefore critical that South Africa's company laws are structured in a manner that seeks to support economic growth, investor confidence and foreign investment
- As the result, transparency, accountability and proper corporate governance and legal and voluntary compliance now play a pivotal role in modern business practice

CIPC CONTACT DETAILS

Website : www.cipc.co.za for detailed info

For all your basic enquiries , click on the enquires button.

Useful Tools

- Track my Transaction
- Login to my Account
- Company Investigations
- How to - Step by Step Guides



Enquiries

QUESTIONS

Any questions ?