

# CIPC Information Session

## Co and CC Deregistration, Re-instatement and Liquidations

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Companies and Intellectual  
Property Commission

a member of **the dti** group

# Deregistration – Legislative Framework

	<b>Companies</b>	<b>Close Corporations</b>
<b>Deregistration Requirements</b>	Section 82(3) of Companies Act Regulation 40 of the Companies Regulations	Section 82(3) of Companies Act Regulation 40 of the Companies Regulations



# Deregistration – Overview

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 annual return years
- If the Commission believes that the company/close corporation has been inactive for 7 years
- Before 1 May 2011, and under the 1973 Companies Act and Close Corporations Act, business would have been referred for deregistration where annual returns were outstanding for a period of six months

# AR Deregistration - Notification of pending deregistration

- Mailed to the registered postal address **as reflected on the CIPC records**
- Informs co and cc's of intended deregistration, and requesting it to either provide confirmation that it is still active, or to lodge the outstanding annual returns.
- At the time of notification, the legal persona still exist



# AR Deregistration – Issues on Notification of Pending Deregistration

## CHALLENGE

- Addresses as per CIPC registers are outdated and therefore the notices does not reach its intended destination
  - Result: high volume of return mail and no notification
- Since registered mail, entities think it is AARTO fines and do not collect registered mail
- Registered addresses on CIPC registers are that of e.g auditor or accounting officer and they do not always action
- E-contact detail incorrect
- No legal duty to submit e-contact detail

# AR Deregistration - Cancellation

- If deregistration due to non-compliance in respect of the lodging of annual returns: filing the outstanding annual returns while in deregistration
- If deregistration for any other reason: written objection to [deregistrations@cipc.co.za](mailto:deregistrations@cipc.co.za)
- Once a co or cc is finally deregistered, no annual return filing or objection can be processed

# Voluntary Deregistration - Requirements

<b>Main Forms:</b>	<b>Original written request on a letter head</b>	<b>R0.00</b>
<b>Supporting Documents:</b>	<ul style="list-style-type: none"><li>• Certified ID copy of any of the persons signing the request</li><li>• Tax number (if available)</li><li>• Tax clearance certificate or any other written confirmation from SARS that no tax liability is outstanding</li><li>• Statement confirming that (i) the company or close corporation is not carrying on business or is dormant and (ii) has no assets, or because of the inadequacy of its assets, that there is no reasonable probability of the company being liquidated.</li></ul>	

[Deregistrations@cipc.co.za](mailto:Deregistrations@cipc.co.za)

5 working days to process request  
4 months to complete the notification

# Voluntary Deregistration – Requirements (Third Party)

<b>Main Forms:</b>	<b>Original written request on a letter head</b>	<b>R0.00</b>
<b>Supporting Documents:</b>	<ul style="list-style-type: none"><li>• Certified ID copy of any of the persons signing the request</li><li>• Tax number (if available)</li><li>• Tax clearance certificate or any other written confirmation from SARS that no tax liability is outstanding</li><li>• Statement confirming that (i) the company or close corporation is not carrying on business or is dormant and (ii) has no assets, or because of the inadequacy of its assets, that there is no reasonable probability of the company being liquidated</li><li>• Documentary proof that-<ul style="list-style-type: none"><li>○ the company or close corporation is not carrying on business or is dormant and</li><li>○ has no assets, or because of the inadequacy of its assets, that there is no reasonable probability of the company being liquidated (if third party, the statement must be supplemented with sufficient documentary proof confirming the statement)</li></ul></li></ul>	

# Voluntary Deregistration Objection

Main Forms:	Original written objection on a letter head	R0.00
	<p>The letter must clearly state the reason for objecting to the deregistration and such must be submitted to the CIPC before the date the company or close corporation is finally deregistered. If the company or close corporation was finally deregistered, the company or close corporation must apply for re-instatement. No supporting documents are required to object to the deregistration.</p> <p>It should be noted that this process cannot be used if the reason for the deregistration is non compliance with annual returns. If the company or close corporation was referred for deregistration due to non compliance with annual returns, the deregistration process will only be cancelled upon the filing of all outstanding annual returns.</p>	

[Deregistrations@cipc.co.za](mailto:Deregistrations@cipc.co.za)

5 working days to process request

Must be submitted before date of final  
deregistration

# Deregistration - Consequences

- The legal effect of the deregistration process: juristic personality is withdrawn and the entity ceases to exist
- Directors / members may be held personally liable for all debts / action that it incurred during such period – common law
- Immovable property becomes *bona vacantia*
- Companies:
  - Companies Act, 2008: Removal of company from the register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register. (own underlining)
  - Companies Act, 1973: The liability of every director, officer and member of the company shall continue and may be enforced as if the company had not been deregistered
  - Continue to exist as an association whose members are personally liable for its debts (companies)

# Deregistration – Consequences (cont...)



- Close Corporation:

- If deregistered after 1 May 2011 the same as for companies apply
- If deregistered before 1 May 2011 repealed section 26 of the Close Corporations Act, 1984 apply
  - If close corporation was deregistered while having outstanding liabilities, the members at the time of deregistration shall be jointly and severally liable
- Possible reckless trading if directors / members allows the deregistration while knowing that there is outstanding debts

# Re-instatement – Legislative Framework

	<b>Companies</b>	<b>Close Corporations</b>
Filing Requirements	Section 33 of Companies Act Regulation 30 of Companies Regulations	Section 15A of Close Corporations Act Regulation 16 of the Close Corporations Administrative Regulations
Restoration Requirements	Section 82(4) of Companies Act Regulation 40 of the Companies Regulations	Section 82(4) of Companies Act Regulation 40 of the Companies Regulations

# Re-instatement – Overview

- Business may apply for re-instatement upon meeting the requirements
- 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
- After the re-instatement application has been filed, all outstanding annual returns must be lodged in order to change the status to “in business” and to legally re-instate the entity – position confirmed by case law



# Re-instatement – Requirements

Main Forms:	CoR40.5	R200.00
Supporting Documents:	<ul style="list-style-type: none"><li>• Certified ID copy of applicant (director/member)</li><li>• Certified ID copy of the customer, filing the application</li><li>• Multiple Deed Search reflecting if there is immovable property or not (compulsory)</li><li>• Copy of advertisement in local newspaper giving 21 day calendar notice</li><li>• Original letter from the Department of Public Works (if immovable property is involved)</li><li>• (removed from requirements as from 2 March 2015) Original letter from National Treasury (if immovable property is involved)</li><li>• Sufficient documentary proof, in the form of bank statements or other third party documents, confirming activity or economic value.</li></ul>	

**As from 1 May 2017, copy of advertisement is no longer required but applicant must provide mandate for the customer to submit application on his/her behalf.**

[Re-instatements@cipc.co.za](mailto:Re-instatements@cipc.co.za)

15 working days to process request

# Re-instatement - creditors

- It is not advisable for creditors to follow administrative re-instatement process
- Any interested party may apply for re-instatement but Companies Regulation 40 states that process is only complete once outstanding annual returns have been filed
  - Only the co or cc itself has the duty to file annual returns
- Creditors are advised to approach the high court for a court order of re-instatement
  - Court order must be submitted to [re-instatements@cipc.co.za](mailto:re-instatements@cipc.co.za) for processing
  - Normal processing procedure applies for re-instatement court orders
  - **Attach customer code when submitting court order in order to receive automatic notification of processing**
  - Once court order is processed (status change to in business), the entity will be referred back into annual return deregistration within 2 – 3 week period
  - Legal personality is still in tact during the deregistration process



# Liquidation - Legislative Framework

Filing Requirements	Companies	Close Corporations
Voluntary Solvent Liquidation	<p>Sections 79-83 of Companies Act read with Chapter 14 of the 1973 Companies Act</p> <p>Sections 343, 344, 346 and 348-353 do not apply to solvent liquidations except to the extent necessary to give full effect to the provisions of Part G of Chapter 2 (sections 79-83 of 2008 Act)</p>	<p>Sections 79-83 of Companies Act read with Chapter 14 of the 1973 Companies Act</p> <p>Sections 343, 344, 346 and 348-353 do not apply to solvent liquidations except to the extent necessary to give full effect to the provisions of Part G of Chapter 2 (sections 79-83 of 2008 Act)</p>
Voluntary Insolvent Liquidations	Schedule 5, Item 9 of the new Companies Act – Chapter 14 of the 1973 Act.	Schedule 5, Item 9 of the new Companies Act – Chapter 14 of the 1973 Act.

# 3 Types of Liquidations

1. Voluntary Solvent Winding Up / Liquidation
2. Voluntary Insolvent Winding Up / Liquidation
3. Court order



# Winding up of solvent Companies and CC's

- Solvent Companies may be dissolved by:
  1. Voluntary winding-up initiated by the company and conducted either by (section 80):
    - (a) The company or
    - (b) The company's creditors, as determined by the resolution of the company
  2. Court order (section 81)

# Voluntary Solvent Winding-Up by Company

- Can either be by the company or creditors
- Company must adopt a special resolution in both instances
- Liquidation special resolution **MUST** be filed with the CIPC, together with the prescribed notice and filing fee

## **Winding up by Company:**

- JM12 (security) from the Master's Office before filing with the CIPC - even if there is no assets or liabilities then an exemption from security must be obtained from the Master, also in the form of the JM12

## **Winding up by Creditor:**

- No security required

# Liquidation - Requirements

Function	Forms to complete	Supporting documents required	E-mail address for filing applications	Fees
<i>Voluntary Winding Up for solvent companies and close corporations</i>	<ul style="list-style-type: none"> <li>CoR40.1</li> </ul>	<p><i>(Section 82 of Companies Act, 2008)</i></p> <ul style="list-style-type: none"> <li>Security - JM12 or consent to dispense with security – if winding up is by company</li> <li>Original or certified copy of the written special resolution or minutes (accompanied by the agenda/notice) of the meeting at which the decision to wind-up was taken</li> <li>Security - JM12 or consent to dispense with security (if liquidated by company / members)</li> <li>Originally certified ID copy of signatory (active director/company secretary/representative)</li> <li>Power of attorney – if representative</li> </ul>	<a href="mailto:liquidations@cipc.co.za">liquidations@cipc.co.za</a>	R250
<i>Voluntary Winding up for Insolvent Companies and Close corporations (Chapter 14 of the Companies Act, 1973)</i>	<ul style="list-style-type: none"> <li>CM26</li> </ul>	<p><i>(Chapter 14 of the Companies Act, 1973)</i></p> <ul style="list-style-type: none"> <li>CM25a or CM25 plus notice of the meeting</li> <li>Security - JM12 or consent to dispense with security – if winding up is by company</li> <li>CM100 – Statement of Company Affairs</li> <li>Originally certified ID copy of signatory on the CM 26 (active director/company secretary/representative)</li> <li>Power of attorney – if representative</li> </ul>	<a href="mailto:liquidations@cipc.co.za">liquidations@cipc.co.za</a>	R80 + R150 penalty if not lodged within a month after the meeting

[liquidations@cipc.co.za](mailto:liquidations@cipc.co.za)

5 working days to process request

# Court order



- Court will issue a provisional liquidation order and then a final liquidation order
- **Forms required:**
  - No forms
  - Customer code to be stated on the court order

# Setting aside liquidation

Section 83(4)(a) Court orders

## **Section 83(4)(a)**

*“At any time after a company has been dissolved –*

*(a) The liquidator of the company, or other person with an interest in the company, may apply to court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances.”*

If entity is dissolved or in a liquidation status it cannot be re-instated

# Difference between Liquidation and De-registration

## **Liquidation:**

When a company or cc is liquidated and dissolved, it means that the entity no longer exists. A liquidated and dissolved company cannot be restored save for unproven creditors claims. No property can be recovered that form part of this entity's assets.

The estate of a company is dealt with by the Master of the High Court i.t.o the Insolvency Act of 1936. A liquidator is appointed to administer the liquidation and distribution of the estate. Once the Master is satisfied that the liquidation and distribution of assets among the creditors have been done, it will issue a notice (JM11) confirming that the entity has been wound up and dissolved.



# Difference between Liquidation and De-registration (cont...)

## **De-registration:**

A Company or CC that is de-registered means that the entity is dormant and inactive, cannot litigate or be litigated against and all property within the entity is declared *bona vacantia* meaning that it is forfeited to the State. A Company or CC that is de-registered however, may be restored and its property may be restored to it if proof can be provided that the entity is active and trading.

# Security

Before the resolution is adopted by the company or close corporation, the company or close corporation must set security with the Master of the High Court for the payment of the company's debts within no more than 12 months after the start of the winding-up of the company or close corporation or obtain consent of the Master to dispense with security.



# Dispensing with Security

For consent to dispense with security the following information must be provided to the Master:

- A sworn statement by a director (if a company) or member (if a close corporation) authorised by the board of the company stating that the company or close corporation has no debts; and
- A certificate by the company's or close corporation's auditor, or a person who meets the requirements for the appointment of an auditor (if company does not have a auditor) stating that to the best of the auditor's knowledge and belief and according to the financial records of the company or close corporation, the company or close corporation appears to have no debts.

Note: The above requirements are determined by the Master itself – must be confirmed with the Master.

# Legal Consequences

- A company or close corporation remains a juristic person and retains all of its powers as such while it is being wound up voluntarily. From the beginning of the company close corporation's winding-up, it must stop carrying on its business except for those activities required for the benefit of the winding up process. Also all the powers of the company's directors or close corporation's members cease, except to the extent specifically authorised,
  - by the liquidator or shareholders in a general meeting in the case of winding-up by company, or
  - by the liquidator or creditors in the case of winding-up by creditors

# Legal Consequences (cont...)

- A company or close corporation is dissolved as of the date its name is removed from the companies' or close corporation register
- The removal of name does not affect the liability of any former director or shareholder (for close corporation its members) or any other person in respect of any act or omission that took place before the close corporation was removed from the register

# Legal Consequences (cont...)

- At any time after dissolution, the liquidator or other person with an interest may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances and if the court declares the dissolution to have been void, any proceedings may be taken against the company or close corporation as might have been taken if the company close corporation had not been dissolved
- Legal personality is only terminated once the entity is “dissolved”

# Master of the High Court

The Master of the High Court is the custodian of the liquidation process

To confirm status of liquidation proceedings – contact the Master of the High Court

Confirms when liquidation proceedings have been finalised and provide dissolution certificate to CIPC



**The Master of the High Court**

# Deregistration, Re-intatement and Liquidation – Administrative support

- All applications must be submitted in a **single e-mail** with all attachments in PDF or TIFF
- If queried, the entire application with the correction must be resubmitted
- All enquiries must be logged via the CIPC website
  - [www.cipc.co.za](http://www.cipc.co.za) / enquiries
- Re-instatement and Liquidation applications will only be tracked and billed PROVIDED that
  - Customer code is indicated on the primary form
  - Sufficient funds in customer code
  - Tracking and billing usually occurs within 1 – 2 working days from date of receipt of application
- Compliance with supporting documents and completeness of application is evaluated after tracking of application

