

# CIPC WEBINAR



Companies and Intellectual  
Property Commission

a member of **the dtic** group

## CO AND CC DEREGISTRATION AND REINSTATEMENTS

### 17 SEPTEMBER 2020

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# AGENDA

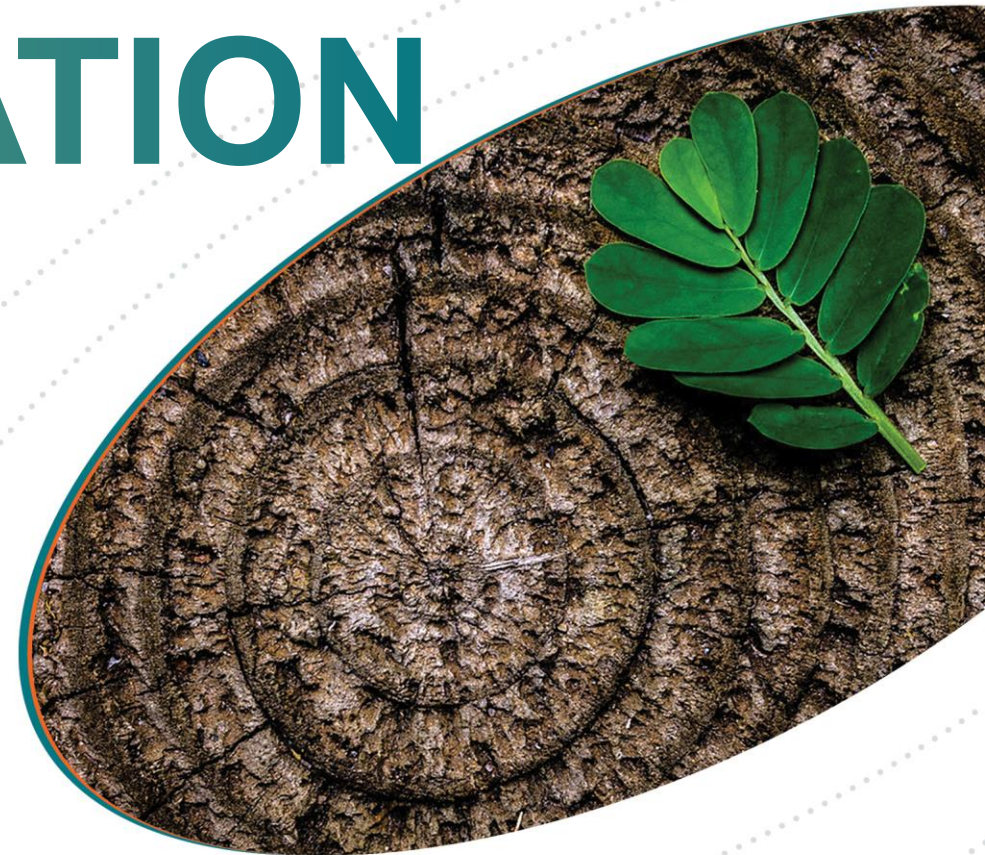
- Company & Close Corporation Deregistration
- Reinstatements



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# DEREGISTRATION



# DEREGISTRATION

	Companies	Close Corporations
Deregistration Requirements	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 2 or more years in succession
- If the Commission believes that the company/close corporation has been inactive for 7 years or commissioner receive a request in the prescribed manner and form and determined that the company has ceased to carry business and has no assets or, because of inadequacy of its assets, there is no reasonable probability of the company being liquidated.



# DEREGISTRATION - OVERVIEW

CONTINUE...

A business may be referred for deregistration:

- 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

## Challenges

- Addresses as per CIPC registers are outdated and therefore the notices does not reach its intended destination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



# AR DEREGISTRATION – ISSUES ON NOTIFICATION OF PENDING DEREGISTRATION

## Challenges

- 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

# ANNUAL RETURN 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

Main Forms:	Original written request on a letter head	R0.00
<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**  
10 working days to process request  
4 months to complete the notification

# VOLUNTARY DEREGISTRATION – REQUIREMENTS (THIRD PARTY)

Main Forms:	Original written request on a letter head	R0.00
<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

10 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*



# DEREGISTRATION - CONSEQUENCES

## 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

## **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



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# REINSTATEMENT



# 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” although the legal personality would have been re-instated upon the processing of the re-instatement application. (may have been an oversight)

# RE-INSTATEMENT – REQUIREMENTS

Main forms	CoR 40.5	
Supporting Documents	<ul style="list-style-type: none"><li>• Certified identity copy of the applicant</li><li>• Certified identity copy of the owner of the customer code</li><li>• Multiple Deeds Search (deed search of each of the 10 regional office deeds offices)</li><li>• Letter from the Department of Public works, Only if the multiple deed search reflex immovable property</li><li>• Sufficient documentary proof indicating that the company or close corporation was in business or that it has any outstanding assets or liabilities(property or intellectual property rights) at the time of deregistration</li><li>• Mandate from the applicant confirming that the customer may submit on his or her behalf</li></ul>	R200

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

30 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

# RE-INSTATEMENT - CREDITORS

- 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

# RE-INSTATEMENT - CREDITORS

- 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



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# THANK YOU

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