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GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

DEPARTMENT OF TRADE AND INDUSTRY
DEPARTEMENT VAN HANDEL EN NYWERHEID

No. R. 1712

18 November 2003

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE
DEPARTMENT OF TRADE AND INDUSTRY

COMPANIES ACT, 1973 (ACT 61 OF 1973)

AMENDMENT OF THE COMPANIES ADMINISTRATIVE REGULATIONS, 1973

The Minister of Trade and Industry has under section 15 of the Companies Act, 1973 (Act 61 of 1973), read with section 28 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), made the Regulations in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

Definition

1. In these regulations "the Regulations" mean the Companies Administrative Regulations, 1973, published under Government Notice No. R.1948 of 19 October 1973, as amended.

Substitution of regulation 1 of the Regulations

2. Regulation 1 is hereby substituted by the following regulation:

"1. In these regulations, unless the context otherwise indicates—

'access code' means the unique identification particulars, whether alphanumeric, biometric or otherwise, enabling the CIPRO system to identify a person;

'the Act' means the Companies Act, 1973 (Act 61 of 1973);

'agent' means any person who has been allowed by the Registrar to use electronic services, including a company secretary, who is legally entitled to act on behalf of a company and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

'CIPRO' means the Companies and Intellectual Property Registration Office that constitutes a combined administrative office for the various registration offices established or deemed to be established under the Act, the Close Corporations Act, 1984 (Act 69 of 1984), the Trademarks Act, 1993 (Act 194 of 1993), the Designs Act, 1993 (Act 195 of 1993), and the Patents Act, 1978 (Act 57 of 1978);

'CIPRO portal' means the Internet website or other electronic portal forming part of the CIPRO system;

'CIPRO record retention system' means the system used by CIPRO to store records for subsequent access, whether in paper, microfilm, electronic or other form;

'CIPRO system' means the computer system, including the CIPRO portal, through which CIPRO provides electronic services, irrespective of the medium or form of technology underlying or forming part of such services;

'electronic services' means the services provided or made available by CIPRO through the CIPRO system in terms of regulation 1A;

'inspect' includes obtaining access to a record via the CIPRO system;

'lodge' includes the creation of a record on the CIPRO system;

'operational requirements' means the requirements provided for in regulation 1A(2);

'record' includes a document and vice versa;

'the Office' means the Companies Registration Office referred to in section 5 of the Act;

'the repealed Act' means the Companies Act, 1926 (Act 46 of 1926).'

Insertion of regulation 1A in the Regulations

3. The following heading and regulation is hereby inserted after regulation 1:

"ELECTRONIC SERVICES

1A. (1) The Registrar may direct by notice in the Gazette that any requirement under the Act or these regulations, including requirements in respect of information, records and payment, may or must be satisfied in electronic form, subject to the provisions of the operational requirements.

(2) The Registrar must publish operational requirements on the CIPRO portal setting out the requirements, processes and procedures in respect of all or certain electronic services, including -

- (a) registration procedures;
- (b) identification, authentication and verification;
- (c) form and format of records;
- (d) manner and form of payment;
- (d) information security requirements; and
- (e) record retention requirements.

(3) The operational requirements may be published in different forms over different parts of the CIPRO portal.

(4) Unless another form of electronic signature is specified in the operating requirements, any signature requirement under the Act or these regulations in respect of a record to be accessed from or lodged with CIPRO is satisfied by the agent entering his access code on the CIPRO system and any record lodged after the agent having entered the access code shall be deemed to have been duly signed by the person whose signature is required under the Act or these regulations for purposes of such record.

(5) Where any form under the Act or regulations makes provision for a signature and such form is deemed to be signed as provided for in sub-regulation (4), it shall not be necessary to have recorded on such form that it had been signed.

(6) Unless CIPRO receives prior written notification from the holder of an access code to disable such access code, CIPRO shall be entitled to accept that the person using electronic services is the person to whom the access code was issued or such person's duly authorised representative acting within the scope of such person's authority.

(7) CIPRO may suspend or terminate electronic services at any time without incurring any liability for doing so."

Amendment of regulation 2 of the Regulations

4. Regulation 2 is hereby amended –

(a) by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) All documents lodged with the Office shall, unless the Registrar otherwise directs, be written in block capitals or be typewritten, lithographed or printed in legible characters, with deep permanent black ink on one side only of strong white paper of a size approximately 298 millimetres by 207 millimetres (international paper size A4) leaving a margin of at least 20 millimetres on the left-hand side thereof: Provided that **[paper of different sizes and of different colours may be specified for forms to be lodged with the Registrar]** the requirements of this regulation are met if documents have been lodged in accordance with the operational requirements and proof of payment of the prescribed fee (if any), has been provided."

(b) by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) Documents or copies of documents to be transmitted or returned to any company or person may, unless the Registrar otherwise directs in any particular case, be **[carbon]** copies of originals.";

(c) by the substitution for sub-regulation (3) of the following sub-regulation:

"(3) The Registrar may reject any document which in his opinion is unsuitable for purposes of record or which does not satisfy the operational requirements.";

(d) by the substitution for sub-regulation (5) of the following sub-regulation:

"(5) A copy of any document in the Office reproduced **[by microfilm]** from the CIPRO record retention system, purporting to be certified by the Registrar or an officer or employee contemplated in section 7 (3) of the

Act, shall without proof or production of the original, upon the mere production thereof in proceedings, whether in a court of law or otherwise, be admissible as evidence in respect of the contents of such document.

Amendment of regulation 3 of the Regulations

5. Regulation 3 is hereby substituted by the following regulation:

"3. All communications to the Registrar may be made, or any document required to be sent to or lodged with the Registrar may be transmitted, through the post or through an agent authorised to the satisfaction of the Registrar or **[by means of an electronic lodgment system provided and]** in such electronic form and by such electronic means as authorised by the Registrar for electronic services: Provided that the provisions of section 63 (3) of the Act shall apply in relation to the delivery and uplifting of the memorandum and articles of a company at the Office.

Amendment of regulation 3A of the Regulations

6. Regulation 3A is hereby substituted by the following regulation:

"3A. Any document lodged with the Office or created on the CIPRO system in terms of regulation 2 (1) may be **[reproduced by microfilm in accordance with the code of practice of the South African Bureau of Standards for the processing, testing and preservation of silver gelatin microfilm for archival purposes: Provided that the microfilm process may be substituted by an electronic archival and imaging system approved by the Registrar]** stored into such form and format as the Registrar may approve from time to time for the CIPRO record retention system.

Amendment of regulation 4 of the Regulations

7. Regulation 4 is hereby amended by the insertion of the following sub-regulation after sub-regulation (2):

"(3) The requirements of sub-regulation (1)(a) and (b) are met if documents have been lodged in accordance with the operational requirements and proof of payment of the prescribed fee (if any), has been provided."

Amendment of regulation 4A of the Regulations

8. Regulation 4A is hereby amended by the insertion of the following sub-regulation after the current regulation, the current regulation becoming sub-regulation (1):

"(2) The fee for checking a draft of a prospectus shall be the fee mentioned in item 5A of Schedule 1."

Amendment of regulation 5 of the Regulations

9. Regulation 5 is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"From Mondays to Fridays the Office shall be open to the public from [08h30 to 12h30 and from 13h15 to 15h00] 08:00 to 15:00, except on the following days:"

Amendment of regulation 7 of the Regulations

10. Regulation 7 is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) Subject to the provisions of sections [63 (2),] 75 (3) and 179 (6) of the Act, the fees to be paid in terms of the Act and these regulations shall be those specified in Schedule 1 to these regulations.

Amendment of regulation 8 of the Regulations

11. Regulation 8 is hereby amended –

(a) by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) The payment of all fees, additional fees and other moneys payable to the Registrar in terms of the Act, these regulations or in relation to any form prescribed in these regulations, must be effected –

- (a) by affixing revenue stamps to any document concerned which stamps may only be cancelled by the Registrar;
- (b) by impressing a stamp on any document concerned by means of a die approved by the Commissioner of Inland Revenue; or
- (c) in such other manner, including such electronic form of payment as the Registrar may direct;

Provided that the Registrar may abolish payment in terms of paragraphs (a) and (b) and, from time to time, direct other manners of payment or of electronic payment of such fees and moneys in respect of different provisions of the Act and these regulations.;

(b) by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) Proof of payment of such fees, additional fees or other moneys shall for as long as such payment is allowed in the manner prescribed in paragraphs (a) and (b) of sub-regulation (1), be affixed to the relevant form or document by means of adhesive paste or glue spread over the entire surface of the reverse side of the acknowledgment of receipt form. In the case of such payment having been made in any other manner contemplated in paragraph (c) of sub-regulation (1), proof of such payment shall be furnished in accordance with the Registrar's requirements for such payment or, if such payment is electronically effected through the CIPRO system, in accordance with the operational requirements."

(c) by the substitution for sub-regulation (3) of the following sub-regulation:

"(3) The date of payment of fees, additional fees or other moneys referred to in [section 10 (1) of the Act] sub-regulation (1), shall be the date, as the case may be –

(a) [on a receipt issued in respect of a payment contemplated in sub-regulation (1); or]

(b) upon which revenue stamps referred to in paragraph (a) of that [section,] sub-regulation are cancelled in accordance with the provisions of that paragraph; or

(c) impressed by means of a date stamp of the Registrar, on a document upon which has been impressed a stamp referred to in paragraph (b) of that [section] sub-regulation; or

(cA) [in respect of] on which a payment was made in a manner contemplated in paragraph (c) of [that] section 10 of the Act or paragraph (c) of and the proviso to sub-regulation (1); or

(d) as indicated on the electronic billing system when the electronic transaction performed by an [approved] agent on the billing

system was performed.”.

Amendment of regulation 9 of the Regulations

12. Regulation 9 is hereby substituted by the following regulation:

“(9) Fees [in relation to inspection of copies of documents or inspection of copies of documents through the Registrar’s provided electronic access system to data and electronically captured images of documents], additional fees and other moneys payable to the Registrar in terms of the Act, these regulations or in relation to any form prescribed in these regulations may be paid on an account, subject to such conditions as the Registrar may [lay down] direct.

Amendment of regulation 10 of the Regulations

13. Regulation 10 is hereby amended –

(a) by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) Any person who personally applies to inspect any document or to obtain a copy of any document kept by the Registrar under the Act, shall complete a form provided by the Office: Provided that the Registrar may waive such requirement for certain electronic services.”;

(b) by the substitution for sub-regulation (2) of the following sub-regulation:

“(2) The prescribed fee for such inspection or copy shall be paid by affixing an uncanceled revenue stamp [or a receipt issued in respect of a payment contemplated in regulation 8 (1)] or a revenue franking machine impression to the form referred to in sub-regulation (1), or, if the Registrar has directed any other form of payment under regulation 8, in the manner so directed.”; and

(c) by the deletion of sub-regulation (3).

Amendment of regulation 11 of the Regulations

14. Regulation 11 is hereby substituted by the following regulation -

“(1) Any person who does not personally, at the Office, inspect a document, kept by the Registrar under the Act, or uplift a copy or extract thereof, may apply in writing to the Registrar for any information relating to the document or for a copy of or extract from any such document and the Registrar must provide the information requested, in such format as he or she is able to provide.

(2) The additional prescribed fee shall be paid in respect of inspection of any document relating to any one company by affixing uncanceled revenue stamps or a revenue franking machine impression to the written application, or in the manner **[prescribed]** contemplated in regulation 8 (1) (c) or 9.

(3) In respect of copies of documents or extracts thereof, relating to any one company, the additional fee shall be paid in respect of each document, and the provisions of sub-regulation (2) shall *mutatis mutandis* apply.”.

Repeal of regulations 14 and 15 of the Regulations

15. Regulations 14 and 15 are hereby repealed.

Amendment of regulation 16 of the Regulations

16. Regulation 16 is hereby substituted by the following regulation:

“16. Any document lodged with the Office or any **[microfilm thereof]** record in the CIPRO record retention system may, **[with the permission of the director referred to in section 1 of the Archives Act, 1962 (Act 6 of 1962), be transferred to the appropriate archives depot or to any intermediate depot, in accordance with the provisions of section 6 of the last-mentioned Act]** subject to the provisions of any law, be moved to other locations, stored in another form, or be destroyed, as the case may be **[Provided that with the permission of the said director any such document may also be transferred to any other approved depot]**.”.

Insertion of regulation 28 in the Regulations

17. The following heading and regulation are hereby inserted after regulation 27:

“ANNUAL RETURN

28. (1) The annual return contemplated in section 173 of the Act must be lodged electronically with the Registrar in the format as made available for electronic completion and lodgment on the CIPRO portal, and must contain particulars in respect of at least the following matters:

- (a) The registered name, registered translated and shortened form of the name, if any, and trading name, if any, of the company;
- (b) registration number of the company;
- (c) type of company;
- (d) the main business of the company;
- (e) date of incorporation of the company;
- (f) the end of the financial year of the company;
- (g) the end of the period for which the last financial statements of the company were lodged with the Registrar;
- (h) the date of the last annual general meeting held by the company;
- (i) the amount of the turnover of the company during the previous financial year;
- (j) the holding company, if any, of the company;
- (k) the registered and postal addresses of the company;
- (l) telephone and other contact numbers and addresses of the company;
- (m) the auditor of the company;
- (n) the secretary of the company;
- (o) the directors of the company;
- (p) the officers of the company;
- (q) the local managers of the company;
- (r) the capital of the company;
- (s) such other information relating to information to be disclosed in terms of the Act and these Regulations as may be required in the annual return.

(2) The prescribed fees for lodgment of annual returns are contained in Schedule 1.

(3) The information required under sub-regulation (1) must be furnished as required irrespective of whether the same information was previously furnished in any CM form or not.”.

Amendment of regulation 29 of the Regulations

Regulation 29 is hereby amended by the insertion of the following sub-regulation after sub-regulation (4):

"(5) The Registrar may permit the requirements of this regulation to be satisfied in electronic format, subject to such directives as he or she may specify."

Amendment of Schedule 1 of the Regulations

18. Schedule 1 is hereby amended –

(1) by the substitution for the words after the heading of the Schedule of the following words and heading:

"Subject to the provisions of sections [63 (2),] 75 (3) [178] and 179 (6) of the Act, the following fees are payable in terms of the Act and the Regulations:

PART A: GENERAL FEES";

(2) by the substitution for item 1 of the following item:

"1	Inspection of – (a) a company file in the Companies Registration Office – (i) personally by an applicant..... (ii) on the written request by an applicant..... (*includes up to [12] 10 photocopies of documents, thereafter [R0,50] R1,00 per copy – certification excluded) (b) the central register of directors – (i) personally by an applicant..... (ii) on the written request by an applicant (*includes up to 12 photocopies of documents, thereafter [R0,50] R1,00 per copy – certification excluded).....	[5,00] 80,00* [20,00]80,00* 5,00 [10,00]25,00*	[H 191] MOO 2 - [H 191] - "
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(3) by the substitution for item 2 of the following item:

"2	(a) Photocopy of a document, size approximately 298mm by 210mm or smaller (per copy).....	[0,50] 1,00	-
	(b) Photocopy on paper reproduced from microfilm (per copy)....	[0,50] 1,00	-
	[(c) Photocopy on diazo reproduced from microfilm (per copy)....]	[1,00]	[H 191]";

(4) by the substitution for item 3 of the following item:

"3	Certification of a document or part of a document (per document).....	[5,00] 10,00	[H 191] MOO 2";
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(5) by the insertion after item 4A of the following item:

"4B	<u>The additional prescribed fee in terms of section 63 (2) of the Act calculated at the rate of-</u>		
	<u>(a) in the case of a company having a nominal share capital with shares having a par value, the amount stated in the next column for each thousand rand or part thereof.....</u>	5,00	-
	<u>(b) in the case of a company having shares of no par value, the amount stated in the next column for each thousand shares or part thereof.....</u>	5,00	-
	<u>(c) in the case of a company having both shares of par value and shares of no par value, the aggregate of the amounts calculated on the basis laid down in paragraphs (a) and (b) of this item</u>		" 1

(6) by the substitution for item 5 of the following items:

["5	Lodgment of prospectus for checking and registration (section 155).....	500,00]	
5A	<u>Checking of draft prospectus (regulation 4A).....</u>	<u>1000,00</u>	
5B	<u>Registration of prospectus (section 155).....</u>	<u>3 000,00";</u>	

(7) by the renumbering of item 5A to item 5C;

(8) by the substitution for item 9 of the following item:

"9	Consideration to an objection to a name (section 45).....	[300,00] 500.00";	
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(9) by the deletion of item 21;

(10) by the substitution for heading ELECTRONIC SERVICES FEES of the following heading:

"PART B: ELECTRONIC SERVICES FEES";

(11) by the insertion after item 3 under the new heading PART B: ELECTRONIC SERVICES FEES, of the following items:

"4	<u>(a) Registration as an agent on the CIPRO portal to access electronic services.....</u>	<u>500,00</u>	
	<u>(b) Monthly agent subscription for electronic services.....</u>	<u>100,00</u>	
5	<u>Data extracts and reports of standard information on the CIPRO database on CD-Rom (*includes the cost of postage, compact disk and preparation cost). Total cost to be calculated at R0,03 for every record of each of the following categories of records: basic company information (one record), directors' information (one record per director) and auditor's information (one record per auditor).....</u>	<u>0,03 per record*</u>	
6	<u>Paper printouts/standard reports of standard information on the CIPRO database (*includes up to 500 records).</u> <u>An additional fee will be charged at a rate of R0,03 for every record of each of the following categories of records: basic company information (one record), directors' information (one record per director) and auditors information (one record per auditor).</u> <u>Every 500 records or part thereof will be regarded and treated as a separate request for information and billed accordingly.</u>	<u>10,00</u> <u>plus 0,03</u> <u>per record*</u>	
7	<u>Customized reports relating to specific combinations or groupings</u>		

	of CIPRO database information can be provided subject to payment of the following fees:		
	(a) Customization of report and storing report as configuration for three months on the CIPRO Web Site for future use by applicant (will be removed after three months if not used); and		
	(b) R0,05 for every record of each of the following categories of records: basic company information (one record), directors' information (one record per director) and auditor's information (one record per auditor).....	15,00 plus 0,05 per record	
8	Viewing and printing of images of documents stored as data (the fee will be charged per page for all the images in respect of the company file irrespective of how many have actually been viewed and or printed.....	0,25 per page	
9	Additional fee in respect any deposit, debit order or other electronic payment, not authorized by bank or other financial institution.....	150,00";	

(12) by the insertion after item 9 of the new **PART B** of the following heading and items:

"PART C: FEES RELATING TO ANNUAL RETURNS

"1	Lodgment of annual return by a public company.....	4000,00	Electronic format
2	Lodgment of annual return by an external company.....	4000,00	Electronic format
3	Lodgment of annual return by a private company with an annual turnover of less than R10 000 000,00.....	450,00	Electronic format
4	Lodgment of annual return by a private company with an annual turnover R10 000 000,00 or more but less than R50 000 000,00	2500,00	Electronic format
5	Lodgment of annual return by a private company with an annual turnover of R50 000 00,00 or more.....	4000,00	Electronic format
6	Lodgment of annual return by associations not for gain (incorporated under section 21).....	Nil	Electronic format".

Amendment of Schedule 2 of the Regulations

23. Schedule 2 is hereby amended –

(a) by the deletion in Form CM 27 of Part B thereof;

(b) by the substitution for the “STATEMENT” before Part B of Form CM 29 of the following statement:

“I(name of director or officer)....., state that, the written consent of the directors or officers whose names appear in this return have been obtained on a duly completed form CM 27, and that according thereto, the directors or officers are not disqualified under section 218 or 219 **[and that the written consent under section 218 (1) (b) of the husband of a women appointed as a director, has been obtained on a form CM 27].**”.