

No. R. 607

1 July 2005

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE**AMENDMENT TO THE CLOSE CORPORATIONS ADMINISTRATIVE REGULATIONS, 1984**

I, MANDISI MPAHLWA, the Minister of Trade and Industry has under section 10 of the Close Corporations Act, **1984**, read with section **28** of the Electronic Communications and Transactions Act, **2002** (Act 25 of **2002**), amended Close Corporations Administrative Regulations, **1984**, in accordance with the Schedule.

SCHEDULE**GENERAL EXPLANATORY NOTE:**

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

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

Definition

1. In these regulations "the Regulations" mean the Close Corporations Administrative Regulations, **1984**, published under Government Notice No. R.2487 of **16** November **1984**, 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;

'Act' means the Close Corporations Act, 1984 (Act 69 of 1984);

'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 Companies Act, 1973 (Act 61 of 1973), 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 customer' means any person making use of electronic services and includes any person who has been allowed by the Registrar to use electronic services, who is legally entitled to act on behalf of a corporation and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

'CIPRO portal' means the Internet website or other electronic portal forming a 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 a part of such services;

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

'forms' means the prescribed forms contemplated in Schedule 4;

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

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

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

'record' in relation to a close corporation, includes a document and vice versa, accounting records, books and papers as contemplated in section 56 of the Act."

Insertion of regulation 1A in the Regulations

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

"ELECTRONIC SERVICES

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

(2) The Reaistrar must publish operational reauirements on the CIPRO portal settina out the requirements, processes and procedures in respect of all or certain electronic services. includina -

- (a) reastration 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 Darts 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 loaded with CIPRO is satisfied by the CIPRO customer entering his access code on the CIPRO system and any record loaded after the CIPRO customer 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 authorized 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: Provided that proper notice of such suspension or termination shall be given and that such suspension or termination will not affect existing rights of any person who has been using such electronic services."~~

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) Documents lodged with the Registration 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 approximately 298 millimeters by 207 millimeters in size (international paper size A4): Provided that [paper of different~~

sizes and of different colours my be specified for forms to be lodged with the Registrar] the requirements of this regulation are met if documents have been lodned 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 corporation 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 record keeping purposes 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 Registration 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 4 (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 or lodged with the Registrar may be transmitted by post or by a member or authorized agent of a corporation in such electronic form and by such electronic means as authorized by the Reaistrar for electronic services: Provided that Forms CK 1, CK 2 and CK 2A if not **lodged** personally or electronically with the Registration Office shall be transmitted by registered [or certified] post.”.

Amendment of regulation 4 of the Regulations

6. Regulation 4 is hereby substituted by the following regulation:

"4. Any document lodged with the Registration Office ~~or~~ created on the CIPRO system in terms of regulation 2 (1) may be [reproduced by the Registrar 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] stored into such form and format as the Registrar may approve from time to time for the CIPRO record retention system."

Amendment of regulation 5 of the Regulations

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

"The Registration Office shall be open to the public from [08h30 to 15h30] ~~08:00 to 15:00~~ from Mondays to Fridays except on the following days:"

Amendment of regulation 7 of the Regulations

8. Regulation 7 is hereby amended –

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

"(1) The payment of all 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 in such manner as the Registrar may direct. "

(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 be [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 document to be affixed] 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 the payment of fees, additional fees or other moneys referred to in [section 6 (1) of the Act] sub-reaulation (1), shall be the date ~~],~~ as the case may be –

[(a) on the receipt issued in respect of a payment contemplated in subregulation (1); or

(b) upon which the revenue stamps referred to in paragraph (a) of section 6 (1) of the Act 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 the said section 6 (1) ~~or~~ in respect ~~of]~~ on which a payment was made in a manner contemplated in [paragraph (c) of the said] section 6 of the Act or sub-reaulation (1).

Amendment of regulation 8 of the Regulations

9. Regulation 8 is hereby substituted by the following regulation:

"(9) Fees [in relation to inspection or copies of documents] and other moneys payable to the Reaistrar in terms of the Act, these reaulations or in relation to any form prescribed in these reaulations may be paid on an account, subject to such conditions as the Registrar may [determine] direct."

Amendment of regulation 9 of the Regulations

10. Regulation 9 is hereby amended –

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

"(1) Any person who applies personally 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 Registration Office: Provided that the Reaistrar may waive such requirement for certain electronic services."; and

- (b) by the deletion of sub-regulation (2).

Amendment of regulation **10** of the Regulations

11. Regulation 10 is hereby substituted by the following regulation -

- “(1) Any person who does not personally, ~~at the Reaistration Office,~~ inspect a document kept by the Registrar under the Act, or collect 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 such document and the Reaistrar 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 documents relating to any one corporation [~~by affixing uncanceled revenue stamps or a revenue franking machine impression to the written application or~~] in the manner [~~prescribed~~] contemplated in regulation 7.
- (3) In respect of copies of documents or extracts thereof, relating to any one corporation, the additional fee shall be paid in respect of each document and the provisions of subregulation (2) shall apply *mutatis mutandis*.”.

Amendment of regulation **13** of the Regulations

12. Regulation 13 is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

- “(1) Any document lodged with the Registration 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 anu law, be moved to other locations, stored in another form or be destroyed, as the case may be.”.

Amendment of regulation **15** of the Regulations

13. Regulation **15** is hereby amended -

- (a) by the substitution for sub-regulation (2) of the following sub-regulation:
- “(2) [The] An original [and two one copies ~~of~~] Form CK 1 shall be lodged for registration and incorporation of a corporation.”; and
- (b) by the substitution for sub-regulation (3) of the following sub-regulation:
- “(3) Proof of payment of the prescribed fee in terms of section 13 of the Act shall be [affixed] provided [to the original Form CK 1 in the following manner:
- (a) If payment has been made] in accordance with regulation 7 (1) ~~],~~ in the manner prescribed in regulation 7 (2); or
- (b) if payment is made in accordance with section 6 (1)(a) or (b) of the Act, by affixing the revenue stamps or impressing the stamp, as the case may be, on such form in the space provided].” .

Amendment of regulation 16 of the Regulations

14. Regulation 16 is hereby amended –

- (a) by the substitution for sub-regulation (2) of the following sub-regulation:
- “(2) [The original and two copies ~~of~~] Original Forms CK 2 and CK 2A shall be lodged for registration.” and
- (b) by the substitution for sub-regulation (5) of the following sub-regulation:
- “(5) If a new accounting officer is appointed his written consent to such appointment shall be attached to Form [CK 2] CK2A .” .

Amendment of regulation 17 of the Regulations

15. Sub-regulation (1) of regulation 17 is hereby amended –

- (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) The original [and one copy ~~of~~] Form CK 4;” and
- (b) by the substitution for paragraph (c) of the following paragraph:

“(c) the original [and two copies **of**] Form CK 1.”

Amendment of regulation **18** of the Regulations

16. Sub-regulation (2) of regulation 18 is hereby amended –

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) The original [and one copy **of**] Form CK 3;” and

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) the original [and two copies **of**] Forms CK 2 and CK 2A, if a change in respect of the matters particulars of which were stated in the founding statement in force at the time of the deregistration of the corporation has taken place or is going to take place with the restoration of the registration of the corporation.”

Amendment of regulation 19 of the Regulations

17. Regulation 19 is hereby amended by the substitution for paragraph (b) of sub-regulation (1) of the following paragraph:

(b) the original [and two copies **of**] Forms CK 2 and CK 2A.”

Amendment of regulation **20** of the Regulations

18. Regulation 20 is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) [The] An original [and one copy **of**] Form CK 6 shall be lodged for registration if a corporation resolves in terms of section 67 of the Act that the corporation should be wound up voluntarily by members or creditors.”

Amendment of regulation **21** of the Regulations

19. Regulation 21 is hereby substituted by the following regulation:

“21. Any person who is a member of a profession whose members are qualified to perform the duties of an accounting officer in terms of section 60 of the Act and who signs any **documents** of or in respect of a corporation in his capacity as accounting officer of such corporation, shall

state the name of the said profession of which he or she is a member and his or her registration number with such profession, beneath his or her signature.”.

Amendment of regulation 22 of the Regulations

20. Regulation **22** is hereby amended by the substitution for sub-regulation **(3)** of the following sub-regulation:

“(3) A corporation or the officer thereof to whom a notice referred to in subregulation (1) was sent and who failed to lodge or remained in default of lodging the copy required in that notice within the period stated **in the** notice shall be guilty of an offence and upon conviction liable to a fine **[of R100]**.”

Amendment of forms in Schedule 4 of the Regulations

21. Schedule **4** is hereby amended –

- (a) by the deletion of the expression “Affix Revenue Stamp or impress revenue franking machine impression here” where it appears in Forms CK 1, CK 2, CK 3, CK 5 and CK 6; and
- (b) by the deletion of the expression “Revenue stamp or revenue stamping machine impression:” where it appears in Form CK7.