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CONTENTS • INHOUD

No.

Page
No. Gazette
No.**GENERAL NOTICE****Trade and Industry, Department of***General Notice*

- 2118 Companies and Intellectual Property Office Registration: Notice of intention to amend the Companies Administrative Regulations, 1973, and the Close Corporations Administrative Regulations, 1984: For written comments and representations

2 26813

GENERAL NOTICE

NOTICE 2118 OF 2004**DEPARTMENT OF TRADE AND INDUSTRY****COMPANIES AND INTELLECTUAL PROPERTY OFFICE REGISTRATION****NOTICE OF INTENTION TO AMEND THE COMPANIES ADMINISTRATIVE
REGULATIONS, 1973, AND THE CLOSE CORPORATIONS
ADMINISTRATIVE REGULATIONS, 1984**

The Minister of Trade and Industry intends amending the Companies Administrative Regulations, 1973 and the Close Corporations Administrative Regulations, 1984, in accordance with the Schedule.

Interested persons are invited to submit written comment and representations on or before **20 October 2004**, to –

The Acting Registrars of Companies and of Close Corporations
Companies and Intellectual Property registration Office
PO Box 429
Pretoria
0001

For attention: Ms JC van Zyl (Legal and Regulatory Services)

Tel (012) 310-8735

Fax (012) 310-2047

E-mail: jvanzyl@cipro.gov.za

SCHEDULE

MEMORANDUM ON THE OBJECTS OF THE AMENDMENTS TO THE COMPANIES ADMINISTRATIVE REGULATIONS, 1973, AND THE CLOSE CORPORATIONS ADMINISTRATIVE REGULATIONS, 1984

CIPRO has been operating as a trading entity since 1 April 2002 and is in the process of automating, simplifying and decentralizing its services through e-commerce. The Electronic Commerce and Transactions Act (ECT Act) was passed during 2002 which enables e-commerce in Government, but all regulations administered by CIPRO need to be amended in order to dovetail with the provisions of the ECT Act.

Payment by way of revenue stamps for Company and Close Corporation related services has already been abolished with effect from 1 March 2004 and it is necessary to remove all references to such form of payment from the relevant regulations and prescribed forms.

In a broad sense the regulations follow all the principles on which the ECT Act is based, but, being one of the first entities in government to embrace these principles, some innovative features are embodied therein. The most dominant is the CIPRO "electronic services" which, from the legal side, creates sufficient flexibility for the rendering of any currently envisaged and future service that might, or need to, be introduced through the Internet. It is based on the principle that the regulations prescribe the framework within which all e-commerce transactions must take place and that "operational requirements" may from time to time be published by the Registrar as part of the specific website to guide users through transactions. These operational requirements will deal with issues such as identification, authentication and verification of users, form and format of records, information security requirements, etc. and can be published in different parts of the website in the format of user instructions. For the rest the regulations deal mainly with

creating concurrent e-transactions for the various existing paper based transactions.

It is to be noted that although these regulations will establish a legal platform for e-commerce in CIPRO in general, e-commerce is from a business point of view, planned to be phased in over a period of time and these regulations will allow such a phased approach.

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.

PROPOSED AMENDMENTS TO THE COMPANIES ADMINISTRATIVE REGULATIONS, 1973

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.

Amendment of forms in Schedule 2 of the Regulations

2. Schedule 2 is hereby amended –

(a) by the deletion of the words "Paste revenue receipt here or Affix revenue stamps here or Impress revenue franking machine impression here" where they appear in Forms CM 1, CM 4, CM 11, CM 46 and CM 49; and

(b) by the deletion of the expression "Revenue stamp or revenue franking machine impression" where it appears in Forms CM 5, CM 6, CM 7, CM 8, CM 8A, CM 9, CM 9A, CM 17, CM 18, CM 26, CM 32, CM 33, CM 35, CM 39, CM 45, CM 50, CM 51 and CM52.

**PROPOSED AMENDMENTS TO THE CLOSE CORPORATIONS
ADMINISTRATIVE REGULATIONS, 1984**

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;

'the 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 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."

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 CIPRO customer entering his access code on the CIPRO system and any record lodged 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."

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 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 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 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 Registrar 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-regulation (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-regulation (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 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 **[determine] direct.**"

Amendment of regulation 9 of the Regulations

10. Regulation 9 is hereby amended –

(a) by the substitution for sub-regulation (1) of 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 Registrar may waive such requirement for certain electronic services."

(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 Registration 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 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 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 lastmentioned 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.”.

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].” and

(c) by the deletion of sub-regulation (4).

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 deletion of sub-regulation (5).

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 two copies 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.

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