

MAGGIE ZEELIE

Company Secretarial Specialist

maggie@maggiezeelie.co.za

084 514 6354

ARE YOU COMPLIANT?

A Guide for Business Owners

Throughout its life span a business is required to comply with various legislation and regulations. Registering a company or conducting business from a CC is merely the first step in managing it. Companies and Close Corporations are required to maintain its information and legal status with CIPC.

The Companies Act 2008 places compliance requirements on all registered entities throughout its life cycle, which includes any changes to the company or corporation's information, annual return filings and deregistration. Set out below is an easy guide to assist you with managing your company compliance obligations. This is not a legal document but rather a guide to some of the most pertinent requirements that must be adhered to.

Income Tax Every company / close corporation must be registered for income tax to comply with the Income Tax Act, Tax Administration Act and all amendments thereto. This means that every director / member also needs to be registered for income tax. Keeping your tax affairs in order and ensuring compliance with the Tax- and Administration Acts will ensure that, when you require same, a Tax Clearance Certificate will be issued without delays and problems. Tax returns need to be submitted annually and provisional tax returns are due to SARS twice annually at the end of February and August. Incorrect calculations and payments of provisional tax returns could be severe and it is recommended that you consult with your tax practitioner herein.

Employees If you have employees in your service, ensure that you comply with the requirement to register with Department of Labour and keep proper records, including Letters of Appointments, Grievance Procedures, etc. as well as with the Compensation Commissioner and timeously file all your annual workmens' compensation returns. An injury at workplace could be costly to you - prevention is better than cure. Any employee earning more than R5,000 per month means your company / corporation needs to be registered with SARS as an Employer – monthly PAYE returns (consolidating UIF and SDL returns) will then need to be submitted and payments made to SARS timeously to avoid penalties. Kindly note that all accounts with SARS are linked, e.g. Tax, PAYE, UIF, VAT, etc., which means that, when application is made for issue of a tax clearance certificate, SARS will check all the various accounts and rejection notice will be issued if any account is not up to date or any returns / payments outstanding.

VAT Voluntary registration as VAT Vendor will be granted by SARS any of the following criteria being met:

Taxable supplies exceeded R50 000.00 in the preceding 12 months

Y N

Taxable supplies did not exceed R50 000.00 in the preceding 12 months but are reasonably expected to exceed R50,000 in the following 12 months, based on one or more of the following situations:

Y N

The actual value of taxable supplies exceeded either an average of R4,200 per month for a minimum of 2 months and a maximum of 11 months immediately preceding the date of registration, or an actual value of R4200 in the month immediately preceding the date of registration

Y N

The actual value of taxable supplies were nil or did not exceed either an average of R4,200 per month for a minimum of 2 months and a maximum of 11 months immediately preceding the date of registration, or an actual value of R4200 in the month immediately preceding the date of registration, but either of the following exist

Y N

Written Contracts in terms of which a contractual obligation exists in writing, to make taxable supplies in excess of R50,000 in the following 12 months reckoned from the date of registration; or

Y N

Finance Agreements wherein the total repayments in terms of that financial, credit or other agreement will in the following 12 months reckoned from the date of registration exceed R 50,000 or

Y N

Expenditure incurred or to be incurred or capital goods acquired and payments made will in the following 12 months reckoned from the date of registration exceed R 50,000

Y N

Goods or services are acquired directly in respect of the commencement of a continuous and regular activity and taxable supplies are expected to be made after a period of time

Y N

Compulsory VAT registration must be attended to when the company / corporation has a turnover of R1 million or more per annum. VAT registrations have become tedious and time consuming and various rules and regulations need to be adhered to.

Accounting Records Keeping proper accounting records ensures that the true financial situation of the business can be monitored. This includes keeping of all invoices (debtors and creditors), receipts, bank statements, et cetera. Maintaining records will ensure that, when required by banking institutions for purposes of reviewing facilities, or applications for funding, etc., management accounts / financial statements can be prepared as speedily as possible. This is also required to assist your tax practitioner in submission of tax returns and calculations of provisional taxes due.

To audit, or not to audit? In terms of the Companies Act, 2008, and the Regulations, not all companies' financial statements need to be audited but are now only subject to an independent review. "Small companies" ⁽ⁱ⁾owner-managed private companies and registered after 1 May 2011) require neither an audit nor independent review of their financial statements. However, various aspects need to be considered such as :

- (1) ⁽ⁱⁱ⁾financial statements must not be false or misleading
 - (2) must be a ⁽ⁱⁱⁱ⁾"fair presentation" of the financial situation of the company, and
 - (3) it is a requirement that companies / corporations with a public interest score of 350 or more must be audited
- It is recommended that you discuss with your auditor, who will guide you and advise you on pros and cons, the options available to you.

If your company / close corporation's financial statements are required to be audited, or if you voluntarily elect to have same audited, it must be filed with CIPC when the company / corporation files its annual returns. It is our recommendation, regardless whether a company submits to audit or not, a professionally recognized auditor or firm of auditors be appointed as auditor by way of registration of form CoR44 to assist in a financial advisory position. Banks and other agencies often require confirmation letters regarding directors and/or shareholders or letters confirming income and being duly appointed avoids unnecessary delays in this regard.

Public Access to Information Act, 2000 In terms of Section 51 of the above Act all businesses, regardless from type of entity conducted, must prepare and keep at the place of business a PAIA Manual.

STATUTORY REQUIREMENTS

Records and Registers Every company must have a company register and a minute book. The company register is the record of all changes from date of incorporation, e.g. transfer of shares, appointment/resignation of directors, special resolutions registered, et cetera. The Minute Book is for all minutes and the minutes and company register are "linked". In other words, every resolution passed that affects any statutory records, are recorded in the Company register. Refer to article on www.maggiezeelie.co.za titled "Records and Registers" (<https://showme.co.za/plett/files/2015/09/Records-and-Registers2.pdf>)

Memorandum of Incorporation Companies registered prior to 1 May 2011 are advised to relook and revise their Memorandum and Articles of Association, together with shareholders agreements, to streamline same with the Companies Act 2008.

If you have registered a company with the shortform CoR15.1A being the memorandum of incorporation, it is advised that, should you have more than 1 (one) shareholders, you revise your Memorandum of Incorporation to make provision for proper regulating of the relationship between directors and shareholders and to ensure that pre-emptive rights are properly addressed. Refer to article on my website for more information <https://showme.co.za/plett/files/2015/02/Pre-emptive-Rights-on-Shares.pdf>

Annual Returns ^[iv]Annual Returns are a legal obligation and every company / corporation is required to submit an annual return to the Commissioner (CIPC). This is submitted electronically, and the purpose is to ensure that all data pertaining to the company / corporation is current and up to date always. Annual returns are due on the anniversary date of its incorporation date and must be filed within 30 business days of the due date. A fee is payable at the time of filing and the fee is dependent on the turnover of your business. Failure to lodge annual returns will result in deregistration. Deregistration of your company / corporation due to non-compliance will have profound consequences for your business and the directors / members in their personal capacities and to re-instate the entity is a costly exercise. Refer to article <https://showme.co.za/plett/files/2016/09/CIPC-and-Financial-Reporting.pdf>

Changes in directors or auditors The Companies Act, 2008 brings with it a greater responsibility to directors and it is recommended that you know what your duties, responsibilities and the liabilities are in acting as a director. Please ask us for a free guide in this regard (available electronically). CIPC must be notified of any changes in directorship within **10 business days** of such change and the same applies to appointment, removal or resignation of auditors. Documents are to be lodged in prescribed form and prescribed manner and it is recommended that you ask for assistance from a professional, or contact us, to ensure there are no unnecessary delays and frustrations. There is also a legal requirement to immediately update any changes in **Registered Office and Postal Address** details.

Deregistration & Liquidation When a company ceases trading, it needs to apply either for deregistration or for liquidation, depending on the circumstances. Deregistration is advisable in cases where the company does not have any assets and is inactive, while liquidation is advisable in cases where the company has outstanding liabilities that must be resolved first.

The above is merely a guide touching on only a few aspects and we recommend that you do not make any big business decisions without first consulting with your auditor, accountant or other financial advisor.

It is our wish that you feel free to contact us at any time for advice or if assistance is required with any matter pertaining to your business and it would be an honour to be your company secretarial consultant and to assist in guiding you to a financial advisor that will look at- and give proper advice and guidance.

^[i] Criteria – director/s and shareholder/s is/are the same

^[ii] Section 29 (2) of the Companies Act, 2008

^[iii] Section 29(1) of the Companies Act, 2008

^[iv] Annual Returns are NOT the same as a tax return which is filed with SARS