

# **CHIEF REGISTRAR'S CIRCULAR NO. 28 OF 2013**

## **COMPANIES ACT, 2008 (ACT 71 OF 2008), AS AMENDED BY THE COMPANIES AMENDMENT ACT, 2011 (ACT 3 OF 2011)**

### **1. Application of this Circular and repeal of CRC 3 of 2012**

Uncertainty exists with regard to the names (suffixes) of companies, as provided for in the Companies Act, 2008 (Act 71 of 2008), as amended by the Companies Amendment Act, 2011 (Act 3 of 2011). This Circular aims, amongst other things, to provide clarity in the above-mentioned regard.

Chief Registrar's Circulars No. CRC 3 of 2012 is hereby withdrawn and substituted with this Circular.

### **2. Commencement of the Act**

The Companies Act, 2008 (Act 71 of 2008) ("the Act"), as amended by the Companies Amendment Act, 2011 (Act 3 of 2011), came into operation on **01 May 2011**, except for section 11(1)(a)(ii) and (iii) that will come into operation on 30 April 2014 (see Government Gazette No. 34243 dated 20 April 2011, together with Proclamation No. R.32 of 2011 in Government Gazette No. 34239 dated 26 April 2011).

### **3. Purpose of the Act**

The purpose of the Act, amongst other things, is to provide for the incorporation, registration, organisation and management of companies; to provide for equitable and efficient amalgamations, mergers and takeovers of companies; to repeal the Companies Act, 1973 (Act 61 of 1973); to make amendments to the Close Corporations Act, 1984 (Act 69 of 1984); and to provide for matters connected therewith.

### **4. Impact of certain provisions of the Act on deeds registration procedures**

#### **4.1. Continuation of pre-existing companies:**

4.1.1. In terms of item 2(1) of Schedule 5 of the Act, every pre-existing company that was immediately before the coming into operation of the Act ('*general effective date*')—

- (a) incorporated or registered in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

- (b) recognised as an “existing company” in terms of the Companies Act, 1973 (Act No. 61 of 1973),

continues to exist as a company, as if it had been incorporated and registered in terms of this Act, **with the same name and registration number previously assigned to it**, subject to item 4 which, inter alia, deals with amendments to a company’s ‘*Memorandum of Incorporation and Rules*’.

#### 4.1.2. Despite section 11 of the Act, a pre-existing company—

- (a) whose name, immediately before the coming into operation of the Act (*the effective date*), satisfied the requirements of section 49 of the previous Act, is not required to change its name to comply with section 11 (3) (c) solely on the ground that any part of its name was in an official language other than English; and
- (b) may continue to use a translated name that, immediately before the effective date, was registered and otherwise met the requirements of section 50 (2) of the previous Act (see item 2(2) of Schedule 5 to the Act).

#### 4.1.3. The effect of the above-mentioned is that:

- (a) a **pre-existing company** need not amend its name in instances where such company’s name has complied with the criteria as referred to in Items 2(1) and 2(2) of Schedule 5 to the Act;
- (b) a **pre-existing company** may continue to use a translated name if such name was registered before the coming into operation of the Act and has met the requirements of section 50 (2) of the previous Act.

### 4.2. **Criteria for names of companies: (*applicable to companies registered in terms of the Act*)**

#### 4.2.1. Section 11(3) of the Act provides that:

- 4.2.1.1. if the name of a profit company is the company’s registration number, preceded by the letter ‘K’, that number must be immediately followed by the expression “(South Africa)” (section 11(3)(a) of the Act), for example:

**(in the case of a private company)**

K2011000123 (South Africa) Proprietary Limited  
 Registration number 2011/000123/07  
 Or

K2011000123 (South Africa) (Pty) Ltd.  
 Registration number 2011/000123/07

**(in the case of a public company)**

K2011000123 (South Africa) Limited  
 Registration number 2011/000123/06

Or

K2011000123 (South Africa) Ltd.  
 Registration number 2011/000123/06

- 4.2.1.2. if the company's Memorandum of Incorporation includes any provision contemplated in section 15(2)(b) or (c) restricting or prohibiting the amendment of any particular provision of the Memorandum, the name must be immediately followed by the expression "(RF)" (section 11(3)(b)), for example:

**(in the case of a private company)**

Blue Mountain (RF) Proprietary Limited  
 Registration number: 2011/000678/07

Blue Mountain (RF) (Pty) Ltd.  
 Registration number: 2011/000678/07

**(in the case of a public company)**

Black Water (RF) Limited  
 Registration number: 2011/000678/06

Black Water (RF) Ltd.  
 Registration number: 2011/000678/06

**(where the name of the RF-company is also its registration number)**

K2011000123 (RF) (South Africa) Proprietary Limited  
 Registration Number: 2011/000123/07

- 4.2.1.3. A company name must, in terms of section 11(3)(c) of the Act, irrespective of its form or language, end with one of the following expressions, as appropriate for the category of the particular company (see examples above):
- 4.2.1.3.1. the word "Incorporated" or its abbreviation "Inc." in the case of a personal liability company;

- 4.2.1.3.2. the expression "Proprietary Limited" or its abbreviation, "(Pty) Ltd.", in the case of a private company;
  - 4.2.1.3.3. the word "Limited" or its abbreviation, "Ltd.", in the case of a public company;
  - 4.2.1.3.4. the expression "SOC Ltd.", in the case of a state-owned company (*this also applies to companies registered before 1 May 2011*);
  - 4.2.1.3.5. the expression "NPC", in the case of a non-profit company (*this also applies to companies registered before 1 May 2011*).
- 4.2.1.4. Both **Afrikaans and English** suffixes are catered for in the Act, as they are set out in the English and Afrikaans text of the Act. Therefore, as was the case under Act No. 61 of 1973, either English or Afrikaans suffixes may be used, irrespective of the language in which the name of the company appears.

The relevant expressions in Afrikaans are as follows (section 11(3)):

- 4.2.1.4.1. the word "**Geïnkorporeer**" or its abbreviation "**Geïnk.**", in the case of a personal liability company;
- 4.2.1.4.2. the expression "**Eiendoms Beperk**" or its abbreviation "**(Edms.) Bpk.**", in the case of a private company;
- 4.2.1.4.3. the word "**Beperk**" or its abbreviation "**Bpk.**", in the case of a public company;
- 4.2.1.4.4. the expression "**MSB Bpk.**" in the case of a state-owned company;
- 4.2.1.4.5. the expression "**MSW**" in the case of a non-profit company.
- 4.2.1.4.6. If the name of a profit company is the company's registration number, that number must immediately be followed by the expression, "**(Suid-Afrika)**, when the deed/document is drafted in Afrikaans.

### 4.3. Issuing of registration certificate and changing / amendment of company's name:

- 4.3.1. The Commission ("Companies and Intellectual Property Commission established by section 185 of the Act") must, after accepting Notice of Incorporation in terms of section 13(1) or an application for the domestication of a foreign company in

terms of section 13(5) of the Act, issue to a company a **registration certificate** in the prescribed form (section 14(1)(b)(iii)).

- 4.3.2. If the name of a company, as entered on the Notice of Incorporation, fails to satisfy the requirements of section 11(3), the Commission may alter the name and issue and deliver to the company an **amended registration certificate** showing the amended name of the company (section 14(2)(a) and 14(2)(bb)).
- 4.3.3. Section 16 of the Act provides for a company's Memorandum of Incorporation to be amended. Such an amendment may, in terms of section 16(5)(b)(i), take the form of changing the company's name.
- 4.3.4. If a company's amendment to its Memorandum of Incorporation includes a change of the company's name, the provisions of section 14(2), read with the changes required by the context, apply afresh and the Commission must issue to the company an **amended registration certificate** (section 16(8) of the Act).
- 4.3.5. An amendment to a Memorandum of Incorporation (in the case of an amendment that changes the name of a company) takes effect on the date set out in the **amended registration certificate** issued by the Commission in terms of section 16(8), read with section 14(1)(b)(iii).

#### **4.4. Endorsement of deed to reflect a change of name of a company**

- 4.4.1. The Act places no burden on the Registrar of Deeds to endorse deeds and documents regarding a change of name of a company.
- 4.4.2. A change of name of a company (affected after 1 May 2011 in terms of the provisions of the Act) must now be recorded in deeds and documents in terms of section 93 of the Deeds Registries Act, 1937 (Act 47 of 1937). A section 93 application must be lodged by the applicant (owner/holder) together with proof of the change of name of a company in the form of an amended registration certificate issued in terms of section 14 or section 16 of the Act.
- 4.4.3. The provisions of section 93(1)(a) that provides for consent of any person that may be affected by a registration of a change of name, and section 93(1)(b) that provides for the lodgement of any operative deeds in which the applicant's old name appears as a party thereto other than as transferor or cedent, need not be complied with. In this instance, a caveat must be noted to the effect that all the relevant title deeds must be endorsed to indicate the change of name.
- 4.4.4. Where a company's name appears in a condition of title, such as servitude rights, restrictive or other conditions, it will not be necessary to change the name when the conditions are brought forward into a new deed. It will also not be necessary to update the title deed to reflect the new name of the company.

However, where there is a condition in a title deed indicating that consent (for e.g transfer of that property) is required from a company that has changed its name, such consent must reflect both the new and former name of the company.

4.4.5. Where a mortgagee company has changed its name (once or several times) it will not be necessary to endorse the bonds to indicate the change in name when such bonds are lodged for **cancellation**. However, the consent to cancellation must refer to all changes of the name.

4.4.6. The status quo remains regarding the endorsement of deeds and documents to reflect a change of name of a company, affected prior to 1 May 2011 in terms of the repealed Companies Act 61 of 1973. The procedure as stipulated in par. 4.4.3, with regard to the noting of a caveat for the piecemeal endorsement of deeds, applies mutatis mutandis.

**4.5. Conversion of close corporations to companies:**

4.5.1. Upon conversion of a close corporation to a company, the Commissioner must *“enable the Registrar of Deeds to effect the necessary changes resulting from conversions and name changes.”* (Schedule 2, Item 1(4)(c)).

4.5.2. Although the Act is silent on the lodgement of an application and the relevant title deed/s, the endorsement of a title deed to reflect a conversion of a company must be given effect to only when an application in terms of section 3(1)(v) of Act 47 of 1937, together with proof of the conversion and the relevant title deed/s, have been lodged. The procedure as stipulated in par. 4.4.3, with regard to the noting of a caveat for the piecemeal endorsement of deeds, applies mutatis mutandis.

4.5.3. Relevant deed/s must be endorsed along the following lines:

**Endorsement in terms of section 3(1)(v) of Act 47 of 1937**

The within close corporation has been converted, in terms of the provisions of the Companies Act, 2008 (Act 71 of 2008) into a \* ..... company and is now known as \*\* ..... (registration number .....).

.....  
**Date**

.....  
**Registrar of Deeds**

\* Insert type of company  
\*\* Insert name of company

**4.6. Conversion (applied for before 1 May 2011) of company to close corporation**

The Act does not provide for the conversion of a company into a close corporation. However, any conversion of a company to a close corporation, applied for in terms of section 27 of Act 69 of 1984 and filed with the Registrar of Companies before 1 May 2011 and not fully addressed at that time, must be concluded by such Registrar in terms of Act 69 of 1984 (Schedule 5, Item 3(2)).

Although registered under the provisions of Act 69 of 1984, such company shall be regarded as a pre-existing company for all purposes of the Act (Schedule 5, Item 3(3)). The procedure as stipulated in par. 4.4.3, with regard to the noting of a caveat for the piecemeal endorsement of deeds, applies *mutatis mutandis*.

#### **4.7. Implementation of amalgamation or merger of companies**

4.7.1. Where property has to be transferred from an amalgamating or merging company to an amalgamated or merged company as a consequence of an amalgamation or merger, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient proof for the registrar of deeds *to effect transfer of the registration of that property* (section 116(8) of the Act).

4.7.2. Although the Act is silent in this regard, an endorsement by the Registrar of Deeds to effect transfer of property, as provided for in section 116(8) of the Act, must be effected only on the lodgement of an application together with a copy of the amalgamation or merger and a copy of the filed notice of amalgamation or merger, and the relevant title deed/s as well as bond/s registered over the property (if any). The procedure as stipulated in par. 4.4.3, with regard to the noting of a caveat for the piecemeal endorsement of deeds, applies *mutatis mutandis*.

4.7.3. Relevant deed/s (and bond/s if any) must be endorsed along the following lines:

**Endorsement in terms of section 3(1)(v) of Act 47 of 1937**

The within company has amalgamated / merged with company ..... (registration number .....), in terms of section 116 of the Companies Act, 2008 (Act 11 of 2008), and is now known as ..... (registration number .....).

.....

.....

**Date**

**Registrar of Deeds**

\*Insert name of company

#### **4.8. Conversion from a private company to a public company and vice versa**

4.8.1. The Act does not provide for the conversion of a private company into a public company, or vice versa. The provisions of section 3(1)(v) of Act No. 47 of 1937 must be invoked to record such conversions.

4.8.2. An application in terms of section 3(1)(v) of Act No. 47 of 1937 must be lodged, together with proof of the conversion and the relevant title deed/s.

4.8.3. Relevant deed/s must be endorsed along the following lines:

**Endorsement in terms of section 3(1)(v) of Act 47 of 1937**

The within company has been converted, in terms of the provisions of the Companies Act, 2008 (Act 71 of 2008) into a \*private / public company and is now known as \*\* ..... (registration number .....).

.....  
Date

.....  
Registrar of Deeds

\* Omit whichever is not applicable  
\*\* Insert name of company

4.8.4. The status quo remains regarding the endorsement of deeds and documents to reflect a conversion affected prior to 1 May 2011 in terms of the repealed Companies Act No. 61 of 1973.

4.8.5. The procedure as stipulated in par. 4.4.3, with regard to the noting of a caveat for the piecemeal endorsement of deeds, applies mutatis mutandis.

#### **4.9. Registration of external Companies**

4.9.1. “**External company**”, in terms of section 1 of the Act, ‘*means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23 (2)*’.

4.9.2. An external company must register with the Commission to conduct business or non-profit activities, as the case may be, within the Republic as an external non-profit company or as an external profit company (section 23(1)).

4.9.3. A foreign company must, for the purposes of section 23(1) and the definition of “*external company*”, be regarded as “conducting business, or non-profit activities, as the case may be, within the Republic” if that foreign company—

- (a) is a party to one or more employment contracts within the Republic; or
- (b) subject to subsection (2A), is engaging in a course of conduct, or has engaged in a course or pattern of activities within the Republic over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within the Republic (section 23(2)).



- 4.9.4. When applying section 23(2)(b), a foreign company must not be regarded as “conducting business activities, or non-profit activities, as the case may be, within the Republic” solely on the ground that the foreign company is or has engaged in one or more of the activities referred to in the said section.
- 4.9.5. It is uncertain, in terms of section 23(2) read with section 23(2A), whether a foreign company can acquire immovable property or be a mortgagee without being registered as an external company. Registrars’ Conference Resolution 47 of 2011, therefore, provides that a foreign company can acquire property or act as mortgagee, provided the conveyancer provides the registrar of deeds with documentary evidence (for example an auditors certificate or affidavit from a director of such foreign company) to the effect that the company need not register as an external company, in terms of section 23 (2) of the Act.
- 4.9.6. The following descriptions of an external company (a foreign company that has been registered in South Africa) are acceptable:

**(in the case of a private company)**

Blue Mountain \* ..... (Incorporated in Australia)  
Registration number: 2011/000678/10

**Or**

Blue Mountain \* ..... (Incorporated in Australia)  
Registration number : 2011/000678/10

**(in the case of a public company)**

Blue Mountain \* ..... (Incorporated in Australia)  
Registration number: 2011/000678/10

**Or**

Blue Mountain \* ..... (Incorporated in Australia)  
Registration number : 2011/000678/10

**(where the name of the external company is a foreign registration number)**

15789456 (Canada)  
Registration number: 2011/000678/10

**\* Insert relevant suffix**

*(note: - an external company registered in South Africa takes on exactly the same name and suffix as that of the parent company registered abroad and it need not incorporate the suffix “Proprietary Limited”, “(Pty) Ltd.”, “Limited”, or “Ltd.”, as the case may be, as it will take on the suffix used in the country of incorporation/jurisdiction of the parent company.*

4.9.7. A company that must register as an external company in South Africa must be described by referring to its name as reflected on its registration certificate or similar document, together with the country of incorporation being appended to its name, and with the registration number allocated to it by the Commission. A company that does not need to register as an external company in South Africa must be described by referring to its name, suffix and registration number as reflected on the registration certificate or similar document issued to the foreign company.

#### 4.10. Practice regarding winding up and liquidation of companies

4.10.1 Item 9 of Schedule 5 to the Act provides that the provisions of Chapter 14 of Act 61 of 1973 to apply as if it had not been repealed, until a date to be determined by the Minister responsible for companies.

4.10.2 In terms of Item 2(3) of Schedule 5 to the Act, sections 49(5) to 49(7) of Act 61 of 1973 apply to the description of companies that were engaged in any winding-up or judicial management procedures **immediately before 1 May 2011**. Therefore, where deeds are lodged for registration in instances where a company is in liquidation, voluntary liquidation or under judicial management, the words "**in liquidation**", "**in voluntary liquidation**" or "**under judicial management**" must still form part of the description of the name of such a company, if such proceedings were started before 1 May 2011.

4.10.3 The Act (transitional arrangements) only refers to companies where the liquidation procedure was initiated while Act 61 of 1973 was in operation. Therefore, the words "**in liquidation**" or "**in voluntary liquidation**" must still be added to the description of a company that is in liquidation or in voluntary liquidation **after 1 May 2011**.

4.10.4 The following descriptions must be followed:

Type	Citation	Explanation
"in liquidation"	ABC (Pty) Ltd. (in liquidation) Registration number 2011/000123/07	Before or after 1 May 2011
"in voluntary liquidation"	ABC (Pty) Ltd. (in voluntary liquidation) Registration number 2011/000123/07	Before or after 1 May 2011
"under judicial management"	ABC (Pty) Ltd. (under judicial management) Registration number 2011/000123/07	If placed under judicial management before 1 May 2011

**4.11. Practice regarding business rescue proceedings**

4.11.1 Section 155 of the Act deals with a compromise between a company and its creditors irrespective of whether or not it is financially distressed as defined in section 128(1)(f), unless it is engaged in business rescue proceedings in terms of Chapter 6.

4.11.2 Proof of the appointment of a business rescue practitioner, as referred to in section 129 of the Act, must be lodged where business rescue proceedings are applicable.

4.11.3 The power of attorney to pass transfer, must read along the following lines:

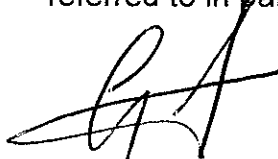
Jan van der Merwe, in my capacity as business rescue practitioner of ABC (Pty) Ltd. Registration number: 2008/049786/07,  
  
duly appointed by the board of directors on ..... in terms of \* section 129(3)(b) of the Companies Act 71 of 2008 / court order in terms of section 131(5) of the Companies Act) 71 of 2008,  
  
as will appear from Notice of Appointment of business rescue practitioner filed with the CIPC on .....

*\* Delete whichever is inapplicable*

- *The vesting clause of a deed must not make reference to the fact that the company is under business rescue proceedings.*

**5. OFFICE FEES**

The Office Fee as prescribed in Item 1(d) of the Schedule of Fees of Office in Regulation 84 of Act 47 of 1937, is payable in respect of an endorsement referred to in par. 4.4. to par. 4.8.

  
**CHIEF REGISTRAR OF DEEDS**  
DATE: 27 NOVEMBER 2013

REFERENCE: A.1/3/1/213  
RINGBINDER 15

CHIEF REGISTRAR OF DEEDS  
REGISTRARS OF DEEDS  
DEEDS TRAINING  
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