

(24 August 2012 - to date)

COMPANIES ACT 71 OF 2008

(Gazette No. 32121, Notice No. 421, dated 9 April 2009. Commencement date: 1 May 2011. [Proc. No. R32, Gazette No. 34239, dated 26 April 2011] – with the exception of section 11(1)(a)(ii) and (iii) which shall come into operation three years from the date of commencement of this Act)

GUIDANCE NOTE 2 OF 2011 REGISTRATION OF COMPANIES

*Government Notice R648 in Government Gazette 35618, dated 24 August 2012. Commencement date:
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(Replaces notice of same content issued 26/04/2011)



GUIDANCE NOTE 2 OF 2011 COMPANIES ACT 71 OF 2008 REGISTRATION OF COMPANIES

This guidance note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and is applicable to companies.

The Companies Regulation, 2010 makes provision for 5 different set *[sic]* of company registration documents each with its own variances. This guidance note is issued to guide customers on what documents must be filed with the incorporation of local companies and registration of external companies and is not a guide on how to complete such documents.

Private Company:

There are two sets of forms that may be used for private company registrations namely CoR15.1A or CoR15.1B. Private companies must at all times have at least one director (unless Mol indicated a higher minimum number of directors). The appointment of an auditor is not mandatory but optional.

(1) Standard Private Company with default requirements as per Companies Act, 2008

The following documents must be filed:

Prepared by:

- CoR15.1A
- CoR14.1
- Supporting documents, namely:
 - Certified passport copies (if foreign national) or certified ID copies (if South African) of all indicated initial directors and incorporators
 - Certified ID copy of applicant if not the same as one of the indicated initial directors or incorporators
 - If an incorporator is a juristic person, then a power of attorney for the representative authorised by such juristic person to incorporate the company and sign all related documents
 - If another person incorporates the company and sign *[sic]* all related documents to the incorporation on behalf of any or all of the incorporators and initial directors, a power of attorney and certified ID copy of such person is required
 - If a name was reserved before filing of incorporation documents, then a valid name reservation document is necessary¹

The following documents may be filed with the CoR15.1A:

- CoR14.1 Annexure A
- CoR14.1 Annexure B in the instances where there *[sic]* a name was not reserved before filing of CoR15.1A but the incorporators elect to apply for a name reservation with incorporation documents.

A CoR14.1 Annexure A MAY BE filed in the following instances²:

- The initial directors of a company has *[sic]* already been appointed before incorporation and such are not the same as the incorporators; or

¹ The applicant (customer) who reserved the name must be same as the applicant filing the incorporation documents. If not the same, an application for the transferring of name must be approved first on CoR11.1

² The incorporators of a company are regarded as the first director (Section 67 of Companies Act, 2008)

- One or more of the incorporators³ of a company is a juristic persons [*sic*] and the count of natural incorporators (first directors) is below the minimum 1 director as required by the Act, or the minimum number of directors specified on the CoR15.1A.

If the CoR14.1 Annexure A is not filed at incorporation but the above instances are applicable, a CoR39 must be filed within 40 business days after incorporation to notify the CIPC of the details of the directors appointed.

(2) Customised Private Company registration:

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C if ring fencing conditions are applicable⁴
- CoR14.1 Annexure D if an auditor, audit committee members and/or company secretary is appointed at the time of incorporation and if the private company has elected to company with enhanced accountability requirements as indicated Chapter 3 of the Companies Act^{5 6 7 8}

If the CoR14.1 Annexure D is not filed at incorporation but the private company has elected to require the appointment of an auditor, company secretary and/or audit committee members a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

³ The incorporators of a company may either be juristic or natural persons (Definition of an "incorporator" read with the definition of "person" as stated within section 1 of the Companies Act, 2008)

⁴ Definition of "ring fencing" as stated within section 1 and requirements as stated within section 16 of the Companies Act, 2008

⁵ An auditor may not be the same person as a director (including audit committee member), officer (including company secretary) or a director, officer or employee of a person appointed as company secretary of the company (Section 90(2))

⁶ Appointment requirements for audit committee members are set out in section 94 of the Companies Act, 2008

⁷ Appointment and maintenance requirements for auditors are set out in sections 90 to 92 of Companies Act, 2008

⁸ Appointment and maintenance requirements for company secretaries are set out in section 86 to 89 of Companies Act, 2008

Personal Liability Companies

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C if ring fencing conditions are applicable⁹
- CoR14.1 Annexure D (kindly refer to notes as indicated under Customised Private Company)

If the CoR14.1 Annexure D is not filed at incorporation but the personal liability company has elected to require the appointment of an auditor, company secretary and/or audit committee members a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

The Mol of a personal liability company must state that it is a personal liability company¹⁰.

Public Companies

Public companies may only be incorporated on a CoR15.1B. Public companies must at all times have at least 3 director *[sic]* (unless Mol indicated a higher minimum number of directors), 3 audit committee members (unless MOI indicates a higher number of audit committee members), 1 juristic or natural company secretary that must be resident in the Republic¹¹ and 1 juristic or natural auditor.

The following documents must be filed:

- CoR15.1B
- CoR14.1

⁹ Definition of "ring fencing" as stated within section 1 and requirements as stated within section 16 of the Companies Act, 2008

¹⁰ Section 8(2)(c) of Companies Act, 2008

¹¹ Section 86(2) of the Companies Act 2008

- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D

If the CoR14.1 Annexure D is not filed at incorporation a CoR44 must be filed within 40 business days after incorporation to notify the CIPC of the details of such officials.

State-Owned Company

State-owned companies may only be incorporated on a CoR15.1B. State-owned companies must at all times have at least 3 director *[sic]* (unless MoI indicated a higher minimum number of directors), 3 audit committee members (unless MOI indicates a higher number of audit committee members), 1 juristic or natural company secretary that must be resident in the Republic and 1 juristic or natural auditor¹².

The following documents must be filed:

- CoR15.1B
- CoR14.1
- Supporting documents as indicated under Standard Private Company

The following documents may be filed with the CoR15.1B:

- CoR14.1 Annexure A (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under Standard Private Company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

¹² Section 9(1) of the Companies Act, 2008

Non Profit Company

There are three sets of forms that may be used for non profit company registrations namely CoR15.1C, D or E. Non profit companies must at all times have at least one director (unless Mol indicated a higher minimum number of directors). The appointment of an auditor and company secretary is not mandatory but optional.

(1) Standard Non Profit Company default requirements as per Companies Act, 2008 (without members)

The following documents must be filed:

- CoR15.1C
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1C:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)

(2) Customised Non Profit Company (without members)

The following documents must be filed:

- CoR15.1D
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1D:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)

- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

(3) Customised Non Profit Company (with members)

The following documents must be filed:

- CoR15.1E
- CoR14.1
- Supporting documents (kindly refer to standard private company)

The following documents may be filed with the CoR15.1E:

- CoR14.1 Annexure A (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure B (kindly refer to notes as indicated under standard private company)
- CoR14.1 Annexure C (kindly refer to notes as indicated under Customised Private Company)
- CoR14.1 Annexure D (kindly refer to notes as indicated under Public Company)

External Companies

The registration documents of an external company are filed using a form CoR20.1

The following documents must be filed for the registration of an external company:

- CoR20.1
- CoR20.1 Annexure A
- Supporting documents, namely:
 - Certified passport copies (if foreign national) or certified ID copies (if South African) of all indicated directors
 - Certified ID copy of applicant if not the same as one of the indicated directors
 - If another person sign [*sic*] all related documents to the registration on behalf of any or all of the directors, a power of attorney and certified ID copy of such person is required

- Certified copy of foreign company constitution
- Certified copy of jurisdiction of incorporation within which it is incorporated
- Certified copy of current registration certificate
- If constitution, incorporation certificate and/or registration certificate is in any other language except any one of the official languages of the Republic the translated version of such documents including the translation certificate.

Yours faithfully,

(Signed)

Adv Rory W Voller

Deputy Commissioner: CIPC

Date: 8/6/2011

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