

(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 7 OF 2011

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Companies and Intellectual
Property Commission
a member of the dti group

GUIDANCE NOTE 7 OF 2011

CONVERSION OF CLOSE CORPORATIONS TO COMPANIES IN TERMS OF THE COMPANIES ACT, 2008 (ACT 71 OF 2008)

This guidance note is issued in terms of Regulation 4 of the Companies Regulations, 2011, and is applicable to the conversion of close corporations into companies. The note is based on -

- Schedule 2 of the Companies Act, 2008; and
- Annexure 2, Table CR 2B of the Companies Regulations, 2011

Conversion of close corporation into profit company

A close corporation may, in terms of item 2 of Schedule 2 of the Companies Act, 2008 (the Act), convert into a profit company having shares, i.e. a private company, a public company or a personal liability company.

Application for conversion

The application to convert into a profit company must be made on Form CoR18.1 and the following forms and documentation must accompany the application:

- The original written resolution or statement of consent, approving the conversion of the close corporation, signed by members holding in the aggregate at least 75% of the members'

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interests in the corporation. The resolution or statement of consent must clearly indicate the decision to convert the corporation into a company and that that[sic] the members who approved the conversion hold an aggregate of at least 75% of the members' interest. The interest of each member who approved or voted against the conversion must be indicated in the resolution or statement of consent;

- Form CoR 39 to identify the initial directors of the company;
- Certified copies of the identity documents of the initial directors;
- a Memorandum of Incorporation for the company to be formed that may either take the form of a CoR 15.1A or CoR 15.1B or alternatively the company's own unique Memorandum of Incorporation. If Form CoR 15.1A or CoR 15.1B is used, reference to "incorporators" on the form must be ignored for purposes of the conversion;
- Form CoR 21.1 if a change in registered office is to be made;
- Form CoR 25 if a change in financial year end is to be made;
- Form CoR 44 if an auditor for the company has been appointed
- Form CoR 44 if a company secretary has been appointed;
- Form CoR 44 if an audit committee has been appointed;
- Form CoR 9.4 (reserved name) if a change of name must take place upon conversion.

All forms filed with the Form CoR 18.1 must be completed using the name the company would use after conversion.

Prescribed fee of conversion application

For the first 3 years following the implementation of the Act on 1 May 2011, there will be no prescribed fee payable for incorporating the company upon conversion but after that period the prescribed conversion fee will be the same as for incorporating a new company.

All other prescribed fees, remain payable.

Effect of conversion

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All members of the close corporation are entitled to become shareholders of the company but the allocation of the shares does not necessarily have to be in proportion to the members' interests in the close corporation. It is not required that all members must become directors of the company.

The juristic person that existed as a close corporation before the conversion continues to exist after the conversion but in the form of a company. Furthermore, upon conversion, all assets, liabilities, rights and obligations of the close corporation vest in the company.

Accounting Officer or Auditor

The appointment of an accounting officer of the close corporation is terminated upon conversion. If the same person is to conduct the independent review in terms of Companies Regulation 29 after the conversion the company must reappoint him or her in this new capacity. No formal notification to the CIPC of the appointment is required.

If the new company is a public company or is required by its Mol to audited, an auditor must be appointed and Form CoR44 must be filed at conversion.

Yours sincerely,

(Signed)

MS ASTRID LUDIN
COMMISSIONER: CIPC
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Physical Address

Postal Address

Customer Contact Centre

the dti Campus Block F
Sunnyside
0001

Companies
P O Box 429
Pretoria
0001

National: 086 100 2472
International: (+27) 83 900 2427