

NOTICE 1664 OF 2009

DEPARTMENT OF TRADE AND INDUSTRY

COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)

**COMPANIES REGULATIONS PURSUANT TO THE
COMPANIES ACT, 2008 (ACT NO. 71 OF 2008)**

I, Dr Rob Davies, Minister of Trade and Industry, pursuant to the signing of the Companies Act, 2008 by the President, hereby give notice in terms of section 223 of the Companies Act, 2008, as follows:

1. The Companies Regulations, 2010 are hereby published for public comment with effect from date of publication to 01 March 2010.
2. The Regulations provides for implementing Chapters of the Companies Act such as, Accountability and Transparency, Business Rescue, Par Value Shares, Social and Ethics Committee, Company Accounting Records, Financial Reporting Standards, Companies to be audited, Independent Reviews (Lesser standard than the audit) and Annual Returns and Discretionary Audit.
3. Members of the public are hereby requested to send their comments to Mr. MacDonald Netshitenzhe at MNetshitenzhe@thedti.gov.za or Fax (012) 394 2506

DR ROB DAVIES, MP

MINISTER OF TRADE AND INDUSTRY

DATE:...../...../ 2009

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COMPANIES REGULATIONS, 2010

Chapter 1 - General Provisions

Part A – Interpretation

1. Short title

Authority: s. 223 (1)(d)(ii)

These Regulations may be cited as the *Companies Regulations, 2010*.

2. Definitions

Authority: s. 223 (1)(d)(ii)

In these Regulations, unless the context indicates otherwise -

- (a) “certified copy” means a copy of a document certified by a Commissioner of Oaths, or electronically certified in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (b) “High Court Rules” means the Rules Regulating the Conduct of the Several Provincial and Local Divisions of the High Court of South Africa, published by Government Notice R48 in Government Gazette 999 of 12 January, 1965, as amended from time to time;
- (c) “initiating document”, depending on the context, means –
 - (i) an application submitted to a regulatory agency;
 - (ii) a complaint submitted to the Commission or the Panel;
 - (iii) a Complaint Referral by the Commission to the Tribunal; or
 - (iv) a Complaint referral directly by a complainant to the Tribunal;
- (d) “previous Act” means the Companies Act, 1973 (Act No. 61 of 1973);
- (e) “principal office” means the principal location within the Republic, as determined in terms of Regulation 176 (1), at which a regulatory agency conducts its operations and is accessible to the public;
- (f) “public holiday” means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);
- (g) “publish a notice” means to publicize information in accordance with Regulation 6;
- (h) “recording officer”, when used in relation to a particular matter, means either –

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Regulation 3

- (i) the officer of the Commission, Panel, Tribunal or the Board, as the case may be, appointed or designated in terms of Regulation 178; or
- (ii) any assistant or acting recording officer having responsibility for the particular matter;
- (i) "Regulation" includes any Table or Form included within or referred to in a Regulation;
- (j) "regulatory agency" means the Commission, the Panel, the Tribunal or the Board;
- (k) "senior officer" means, in the case of -
 - (i) the Commission, the Commissioner;
 - (ii) the Panel, the chairperson of the Panel, designated in terms of section 198;
 - (iii) the Tribunal, the chairperson the Tribunal, appointed in terms of section 194; or
 - (iv) the Board, the chairperson of the Board, appointed in terms of Regulation 130;
- (l) "the Act" means the Companies Act, 2008 (Act No. 71 of 2008), as amended from time to time; and
- (m) "the Board" means the Business Rescue Practices Regulatory Board" established by Regulation 129.

3. Interpretation

Authority: s. 223 (1)(d)(ii)

(1) In these Regulations -

- (a) a reference to a section by number refers to the corresponding section of the Act;
 - (b) a reference to a Regulation by number refers to the corresponding provision of these Regulations; and
 - (c) a reference to a sub-regulation or other partial Regulation by number refers to the corresponding clause of the Regulation in which the reference appears.
- (2) A word or expression that is defined in section 1, or elsewhere in the Act to the extent applicable in particular circumstances, bears the same meaning in these Regulations as in the Act.

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Regulation 3

- (3) If, with respect to a decision to be made by a juristic person other than a company in any particular matter -

- (a) a provision of the Act requires that the matter be determined by special resolution of that juristic person; and
- (b) neither the relevant law in terms of which that juristic person was incorporated, or the constituting document of that juristic person, defines or contemplates a special resolution

that provision of the Act must be regarded as requiring approval of that matter by the highest deliberative standard contemplated by the relevant law applicable to, and the constituting documents of, that juristic person.

- (4) To the extent that the content or effect of any particular provision of a company's Memorandum of Incorporation -

- (a) is required of the company in terms of any applicable public regulation, or the listing requirements of an exchange; and
- (b) incidentally has the effect of negating, restricting, limiting, qualifying, extending or otherwise altering the substance or effect of an unalterable provision of the Act,

that provision of the company's Memorandum of Incorporation must not be construed as being contrary to section 15 (1), read with the definition of "unalterable provision" in section 1.

- (5) If, as a consequence of the coming into effect of the Act and the repeal of the previous Act, a conflict, dispute or doubt arises within 18 months after the effective date concerning the particular manner or form in which, or time by which, a pre-existing company is required to -

- (a) prepare its annual financial statements, convene an annual general meeting, provide copies of its annual financial statements, any other document or any notice to its shareholders; or
- (b) file any particular document with the Commission; or
- (c) take any other particular action required in terms of the Act or its Memorandum of Incorporation,

the company may apply to the Tribunal for directions, and a member of the Tribunal may make an administrative order that is appropriate and reasonable in the circumstances.

- (6) For the purposes of the Act and these regulations, three or more persons are to be regarded as inter-related if any two of them are related, and one of those persons is related to the third, and so forth in an unbroken sequence.

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

Regulation 4

Part B – Guidelines, Practice Notes, Forms, Notices and other documents

4. Issuing and Status of Practice Notes and Guidelines

Authority: s. 223 (1)(b) and (c)

(1) In this Regulation,

- (a) “Guideline” means a document setting out recommended procedures, standards or forms reflecting a regulatory agency’s advice as to what constitutes best practice on a matter; and
- (b) “Practice Note” means a document setting out –
 - (i) the procedure that will be followed by a regulatory agency; or
 - (ii) a procedure to be followed when dealing with a regulatory agency, or
 - (iii) a regulatory agency’s interpretation of, or intended manner of applying, a provision of the Act or these Regulations

in a respect to a matter within the authority of that regulatory agency.

(2) The senior officer of a regulatory agency may -

- (a) issue a Guideline at any time by –
 - (i) publishing a notice of the Guideline to the general public in any generally circulated newspaper, on the regulatory agency’s web site, or but any similar means of providing information to the public generally; and
 - (ii) making a printed or electronic copy of the Guideline freely available to any person upon request; or
- (b) issue a Practice Note at any time by publishing it in the Gazette, and may amend or withdraw any such Practice Note at any time by subsequent notice in the Gazette.

(3) A Guideline or Practice Note must be consistent with the Act and these Regulations.

(4) A Guideline issued in terms of the Act or this regulation is not binding on the regulatory agency that issued it, or on any other person, regulatory authority, tribunal or court.

(5) A Practice Note issued in terms of the Act or this regulation is binding on the regulatory authority that issued it until it is amended or withdrawn, as contemplated in sub-regulation (2)(b), but a practice note issued by –

- (a) the Commission is not binding on the Tribunal or a court; or

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Chapter 1 - General Provisions : Part B – Guidelines, Practice Notes, Forms, Notices and other documents

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- (b) any other regulatory agency is not binding on a court.

5. Forms and filing requirements

Authority: s. 223 (1)(b) and (d)(i)

- (1) Whenever a document is required –

- (a) in terms of a section of the Act or a provision of these Regulations listed in column 1 of Table CR 1; and
- (b) for a purpose listed in column 2 of that Table,

the document must be substantially in the form of the annexure listed opposite that section number in column 3 of that Table, and must be produced, delivered, or filed as the case may be subject to any conditions or requirements listed opposite that section number in column 4 of that Table.

- (2) If a regulatory authority has reasonable grounds for uncertainty whether a copy of a document to be filed is in fact unaltered, as contemplated in section 6 (7), the regulatory authority may require the person seeking to file that document to provide a certified copy of the document.

6. Publishing of notices

Except as specifically required elsewhere in these regulations, a regulatory agency or person required to publish a notice in terms of the Act or these regulations must –

- (a) place an advertisement, setting out the notice, in a daily newspaper circulating to the general public within each province in which the relevant company routinely conducts its business activities; and
- (b) if the publication is required by a company, it must conspicuously post a copy of the notice at its principal places of conducting its business activities; and
- (c) if the publication is required by regulatory agency or a company, it must conspicuously post a copy of the notice -
- (i) on its website, if it has one; and
- (ii) on SENS, if it is a listed company.

7. Notice of availability of documents

Authority: s. 6 (11)(b)(ii)

- (1) A notice of the availability of a document, record or statement, as contemplated in section 6 (11)(b), must -

- (a) be in writing and delivered to each intended recipient of the document, record or statement either;

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Regulation 8

- (i) in paper form at the intended recipient's last known delivery address; or
 - (ii) in electronic form at their last known electronic mail address; and
 - (b) set out clearly -
 - (i) the title of the document, record or statement the availability of which is being advertised;
 - (ii) the extent of the period during which the document, record or statement will remain available;
 - (iii) the means by which the the document, record or statement may be acquired by a recipient of the notice; and
 - (c) include a statement that succinctly summarizes the purpose of the document, record or statement.
- (2) A document, record or statement the availability of which is being advertised –
- (a) must be made available to intended recipients in paper copy, or in a printed version of an electronic original produced by or on behalf of the company on demand by an intended recipient; and
 - (b) may in addition be made available to intended recipients to request and obtain by electronic transmission in a manner and form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

8. Delivery of documents

Authority: s. 223 (1)(b) and (d)(i)

- (1) A notice or document to be delivered for any purpose contemplated in the Act or these Regulations may be delivered in any manner set out in Table CR 3.
- (2) Subject to sub-regulation (4), a document delivered by a method listed in the second column of Table CR 3 will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of that table.
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these Regulations,
 - (a) if a regulatory agency is required to deliver the document, the recording officer may apply to the High Court for an order of substituted service; and
 - (b) in any other case, the person concerned may apply to the Tribunal for an order of substituted service.
- (4) Subject to Regulation 176 (3), if the date and time for the delivery of a document referred to in Table CR 3 to a regulatory agency is outside of the office hours of that

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Regulation 8

regulatory agency as set out in Regulation 176 (2) that document will be deemed to have been delivered on the next business day.

- (5) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -
- (a) The name, address, and telephone number of the sender;
 - (b) The name of the person to whom it is addressed, and the name of that person's attorney, if it is being sent to the attorney for a person;
 - (c) The date and time of the transmission;
 - (d) The total number of pages sent, including the cover page; and
 - (e) The name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company NAMES

Regulation 9

Chapter 2 - Formation, Administration and Dissolution of Companies

Part A – Reservation and Registration of Company NAMES

9. Company names

Authority: s. 223 (1)(d)(ii)

(1) In this regulation -

(a) “company concerned”, when used in relation to –

(i) an application to reserve a name –

(aa) means an entity that is contemplated, but not yet incorporated; or

(bb) in the case of an application filed by or in respect of an existing company contemplating changing its name, means that company;

(ii) a notice of incorporation, means the company being incorporated; or

(iii) a notice of Amendment of a Memorandum of Incorporation, means the company filing the notice; and

(b) “proposed company name” means a name that appears on -

(i) an application for name reservation; or

(ii) either

(aa) a Notice of Incorporation; or

(bb) a Notice of Amendment of a company's Memorandum of Incorporation

irrespective whether the name has been reserved before the filing of any such notice.

(2) Irrespective of the language of any words used in a proposed company name –

(a) every word comprising part of the name must be expressed using the alphabet that is commonly used for writing in any one of the official languages of the Republic; and

(b) every number forming part of the name must be expressed either in words or in Arabic or Roman numerals.

(3) If a proposed company name contains any word or words in any language that is not an official language of the Republic, the application or notice filed to reserve or use that name must include either –

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 10

-
- (a) a certified translation of that word, or those words, into an official language of the Republic; or
 - (b) a declaration that the word falls, or the words fall, within the category of words contemplated in sub-regulation (4).
- (4) If a proposed company name contains any word, or combination of words, in any language that constitute -
- (a) a registered trade mark; or
 - (b) a mark in respect of which an application has been filed in the Republic for registration as a trade mark; or
 - (c) a well known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act No. 194 of 1993)

the application or notice filed to reserve or use that name must include satisfactory evidence that the applicant or the company to use that name is entitled to use that word or combination of words.

- (5) If a proposed company name -
- (a) is similar to the name of another company, close corporation or co-operative, and is claimed to be justifiable on the grounds that –
 - (i) the company to use that name; and
 - (ii) the other company, close corporation or co-operative, as the case may be,

are both part of a common group of companies; or
 - (b) falls within any category of names restricted in terms of section 11 (2) (b), and is claimed to be justifiable on the grounds that the company to use that name is in fact part of, associated with, operated by, sponsored by, supported by, endorsed by, owned by, operated by, conducted by, or enjoys the patronage of, as the case may be, a person or entity contemplated in that section,

the application or notice to use that name must include satisfactory evidence supporting that claim.

Authority: s. 11 (4)

- (6) In addition to the symbols set out in section 11(1)(a)(ii), the name of a company may include the following symbols: @, - .

10. Reservation of company names

Authority: s. 12

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 10

- (1) An application to reserve a name in terms of section 12 (1) must be made in Form CoR 10.1, and must be accompanied by -
 - (a) the fee set out in Table CR 2; and
 - (b) any relevant documentation or evidence required in terms of Regulation 9.
- (2) An application to extend the reservation of a name, as contemplated in section 12 (4), must be made in Form CoR 10.2, and must be accompanied by -
 - (a) the fee set out in Table CR 2B;
 - (b) a statement by the applicant setting out the reasons why the name has not been used within the time that it has been reserved, and why it is anticipated that the name will be used within the period of the extension; and
 - (c) in the case of a name in respect of which satisfactory evidence of any facts was required in terms of Regulation 9 when the name was first reserved, further satisfactory evidence that the relevant circumstances have not altered.
- (3) The Commission must issue to the applicant –
 - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9, before determining whether to accept the application.
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application to reserve a name, or extend the reservation of a name; or
 - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if -
 - (i) the form of the name does not satisfy any requirements set out in section 11, or Regulation 9 (1); or
 - (ii) use of that name by the applicant is prohibited in terms of section 12 (2).
- (4) If the Commission has accepted the reservation of a name that the Commission considers may be contestable on any ground contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue–
 - (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7, to the South African Human Rights Commission and to the applicant if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

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Chapter 2 - Formation, Administration and Dissolution of Companies : Part A – Reservation and Registration of Company Names

Regulation 11

11. Defensive reservation of names

Authority: s. 12 (9)

- (1) An application for a defensive reservation of a name must be –
 - (a) made in Form CoR 11.1; and
 - (b) accompanied by –
 - (i) the fee set out in Table CR 2B; and
 - (ii) evidence that the applicant has a direct and material interest in the name.
- (2) An application to renew a defensive reservation of a name must be –
 - (a) made in Form CoR 11.2; and
 - (b) must be accompanied by –
 - (i) the fee set out in Table CR 2B; and
 - (ii) evidence that the applicant continues to have a direct and material interest in the name.
- (3) A defensive name reservation may be transferred to another person, in accordance with Regulation 12.
- (4) The Commission must issue to the applicant –
 - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of sub-regulation (1)(b)(ii) or (2)(b)(ii) before determining whether to accept the application;
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted an application for defensive reservation of a name, or to renew the defensive reservation of a name; or
 - (c) a Notice of Refusal of a Name Reservation in Form CoR 10.5, if –
 - (i) the form of the name does not satisfy the requirements of section 11, or Regulation 9 (1); or
 - (ii) the use of that name by the applicant is prohibited in terms of section 12 (2).

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Regulation 12-r13

- (5) If the Commission has accepted the defensive reservation of a name that may be contestable on any grounds contemplated in section 12 (3), the Commission, when issuing the Confirmation Notice in response to that application, must also issue –
 - (a) A Notice of a Potentially Contested Name, in Form CoR 10.6, to the applicant if the name is contestable in terms of section 12 (3)(a), read with section 11 (2)(a) or (b); or
 - (b) a Notice of a Potentially Offensive Name, in Form CoR 10.7 to the South African Human Rights Commission and to the applicant, if the name is contestable in terms of section 12 (3)(b), read with section 11(2)(c).

12. Transfer of reserved names

Authority s. 12 (5)

- (1) An application to transfer the reservation, or defensive reservation, of a name to another person must –
 - (a) be made in Form CoR 12.1, and accompanied by the fee set out in Table CR 2B; and
 - (b) in the case of a -
 - (i) a name reservation in respect of which satisfactory evidence of any facts was required in terms of Regulation 9, must be accompanied by satisfactory evidence of the comparable facts in relation to the transferee; or
 - (ii) defensive reservation, must be accompanied by satisfactory evidence that the transferee has a direct and material interest in the name.
- (2) The Commission must issue to the applicant –
 - (a) a Notice Requiring Further Particulars in Form CoR 10.3, if the Commission requires more information to satisfy any relevant requirements in terms of Regulation 9 or sub-regulation (1)(b)(ii); or
 - (b) a Confirmation Notice Concerning a Name Reservation in Form CoR 10.4, if the Commission has accepted the Notice of Transfer of the name; or
 - (c) a Notice of Refusal of a Name Transfer in Form CoR 12.2 if the use of that name by the transferee is prohibited on the grounds that the evidence of matters contemplated in Regulation 9 or sub-regulation (1)(b)(ii) is unsatisfactory.

13. Disputes concerning rejected applications

Authority s. 156 (b)

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Regulation 14

- (1) A person to whom a Notice of Refusal to reserve a name, in Form CoR 10.6, or a Notice of Refusal of a Name Transfer, in Form CoR 12.2, is delivered in terms of Regulation 10, 11 or 12, may apply to the Tribunal in Form CTR 147 for a determination whether the name satisfies the requirements of section 11, or satisfies the requirements for transfer, as the case may be.
- (2) An application in terms of sub-regulation (1) may be made -
 - (a) within 20 business days after the date of a notice contemplated in sub-regulation (1); or
 - (b) on a later date, if so permitted by the Tribunal, on good cause shown.
- (3) After considering an application made in terms of sub-regulation (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Tribunal -
 - (a) must make a determination whether that name satisfies the requirements of section 11, or the requirements for a transfer of name, as the case may be; and
 - (b) may make an administrative order –
 - (i) confirming or varying, in whole or in part, the notice issued by the Commission; or
 - (ii) directing the Commission to -
 - (aa) reserve a name for the applicant in terms of section 12;
 - (bb) transfer a reserved name.
- (4) Within 20 business days after receiving a notice or a decision issued by the Tribunal in terms of this regulation, an incorporator of a company, a company, a person who received a notice contemplated in sub-regulation (1), an applicant under sub-regulation (1) or any other person with an interest in the name or proposed name that is the subject of the application, as the case may be, may apply to a court to review the decision.

14. Abuse of name reservation system

Authority: s. 12 (6)

- (1) A notice contemplated in section 12 (6), must be issued by the Commission in form CoR 14, and must –
 - (a) specify clearly the purpose of the notice in terms of the items listed in section 12 (6)(a) to (d); and
 - (b) set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.