



Experience Isn't Expensive... It's Priceless

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Client Survey

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Product Focus

CIPC NON-BINDING OPINIONS

The Companies and Intellectual Property Commission (CIPC), in certain instances, provides non-binding opinions on the interpretation of the Companies Act, 2008 ("the Act").

The purpose of this newsletter is to provide an example of such an opinion.

The main question put to CIPC was: When does an amendment of a Memorandum of Incorporation (MOI) become effective? (Section 16(9))

Is it when the amendment is filed with CIPC or is it when CIPC has processed and approved the amendment of the MOI?

CIPC responded as follows to the question in a non-binding opinion:

The CIPC, as an office of company records in terms of both the Act and the Regulations, are required to verify certain information in addition to other tasks. In line with statutory requirements, Form CoR15.2 is required to be filed, together with a copy of the special resolution adopted by the members of the company, in order to suitably record an amendment to the MOI.

The CIPC pointed out that they have no option but to reject the filing of a specific document in the following circumstances:

- If the prescribed fee for that document or form has not been paid;
- If the information required is incomplete;
- If the company name and registration number do not match or the company cannot be identified;
- If the document or form is not signed;
- When CIPC is unable to confirm the identity of the person filing the document/form (Reg 168); and
- If CIPC is unable to verify that the person filing the document or form has the right to file that document or is authorised to file it on behalf of another person (Reg 168).

Furthermore, the CIPC also has the right and duty to ensure that the amendment filed with them complies with all the relevant requirements of the Act or Regulations. For example, certain amendments to an MOI, such as the conversion of par value shares into no par value shares, must be accompanied by a report by the board. (Reg 31 (5))

In addition, the filing of a document may also be challenged in terms of Regulation 168 (6) and (7).

Only once the filing has been accepted by the CIPC can it be understood that the amendment of the MOI has been filed, as the CIPC can reject it if it does not comply with the above.

Therefore, the CIPC does not regard any document as effectively filed unless it complies with the above criteria.

Aside from the non-binding opinion issued by CIPC clarifying the interpretation of the relevant statutory requirements by CIPC, other opinions in the market place seem to argue that the CIPC is not in a position to interpret the wording of the Act in such a manner as to substantiate their view of the requirement. After all, "filing" is also defined in the Act to mean "deliver" and the need for any document to be formally processed after "delivery" is not specifically addressed or required by the Act.

Who is right? Only time will tell.

[Click Here](#) to find more information on this topic and other non-binding opinions issued by CIPC.

Meet the Team

Annamarie van der Merwe (B.Iuris, LLB, LLM) has been a corporate lawyer and company secretary of companies in the listed environment for more than 20 years. She is a member of the King Committee on Corporate Governance for South Africa and was actively involved in the writing of King III, focusing specifically on the chapter dealing with boards and directors. Annamarie is also a well-known presenter of workshops for directors and company secretaries on issues such as board effectiveness, statutory duties and liabilities and effective meetings.

As the managing director of iThemba, Annamarie started the company in 2008 with the dream of establishing a reliable and professional company and secretarial service provider. Under her leadership and guidance iThemba has grown from the original compliment of two staff members to the 17 staff members today. She has the following to say about iThemba and the future: "There is a huge demand and need for proper support and guidance for companies in ensuring compliance with the laws of the country as well as implementing good corporate governance practices. If iThemba can continue to meet the needs and expectations of its clients, there is an exciting future ahead of us." In addition to fulfilling her career dreams through iThemba, Annamarie also fulfils the roles of mother and grandmother – two titles she treasures and enjoys immensely.



Our Tip for the month

Preserving Balance in Corporate Governance

Do you ever wonder why there are tensions between directors and shareholders? Are you uncertain as to the responsibilities of directors and those of shareholders, if any? What is the "corporate governance balance" between directors and shareholders?

[Click here](#) for a universal article written by Holly J. Gregory that appeared on 1 February 2013 in the Harvard Law School Forum on Corporate Governance and Financial Regulation for clarification on this topic.

Interesting Article

[Click here](#) for an interesting article from Harvard's Corporate Governance Forum

Dates to Remember

New changes to deregistration of companies

End April 2013

iThemba celebrates 5 years in business

iThemba is fast moving out of the toddler phase with a big bang! Staff members will be celebrating this joyous occasion with a lovely weekend stay at Didimala Lodge. We at iThemba are all immensely grateful for being richly blessed during the past five years. Thank you to all clients and service providers for their continued support during this time. We look forward to many years of providing professional service, building solid relationships and making a difference to those around us.