

The logo for the Institute of Accounting & Commerce (IAC) features the letters 'IAC' in a bold, blue, serif font. A grey swoosh underline starts under the 'I', passes under the 'A', and ends under the 'C' with a small grey circle at its tip.

INSTITUTE OF ACCOUNTING & COMMERCE

your future secured

INSTITUTE OF ACCOUNTING AND COMMERCE OF SOUTH AFRICA

South African Company Law:
A Practical Handbook
for Accounting Professionals

CONTENTS

1	Introduction	1
2	Types of Companies	2
3	Incorporation and Registration of Companies	6
4	Company Constitutions – The Memorandum of Incorporation (“Moi”)	7
5	Alteration of Company Structures: Shares and Changes in Share Capital	15
6	Alteration of Company Structures: Step-by-Step Guideline on the Conversion of Companies	18
7	Shareholders: Rights and Resolutions	20
8	Directors: Appointment, Powers, Duties, and Liability	25
9	Ixbri and FAS Meaning and Application	28
10	Public Interest Score (“PIS”)	29
11	Financial Statement Requirements	33
12	Company Records and Access to Information	34
13	Meeting Requirements	36
14	Beneficial Ownership	43
15	Annual Returns	45
16	Re-Instatement	46
17	Deregistration	47
18	B-BBEE Affidavits	48
19	Close Corporations	50
20	Duties of Accountants	54
21	Liability of Accountants	57
22	Engagement Letter	59
	Appendices	62
1.	Glossary	62
2.	Engagement Letter	63
3.	Close Corporations (“Ccs”)	74
4.	Companies	77
5.	Bibliography	82

1 INTRODUCTION

Purpose of the Handbook

- To provide accounting professionals with a concise, practical overview of South African company law as it relates to governance, financial reporting, and corporate transactions.
- To bridge the gap between legal requirements and day-to-day accounting and compliance oversight tasks.

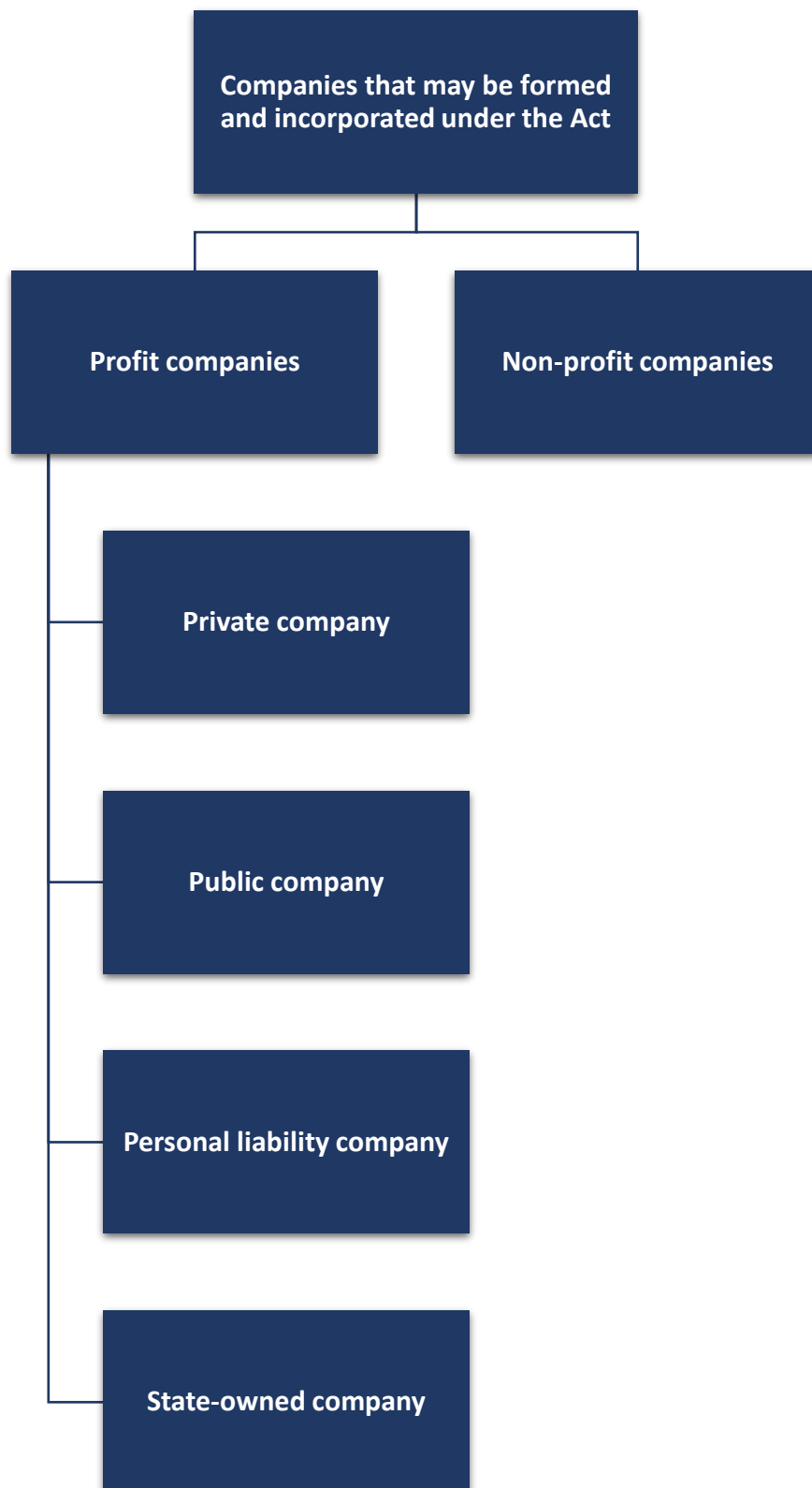
Role of Accounting Professionals in Company Law

- Ensure accurate and compliant financial reporting in line with legal obligations.
- Aid in corporate governance by monitoring compliance with the Memorandum of Incorporation (“MOI”), directors’ duties, and shareholder rights.
- Support corporate transactions (capital changes, restructures, conversions) by providing financial analysis, due diligence, and robust record-keeping.
- Serve as a framework for internal controls, audits, and regulatory submissions.

Legal vs Ethical Duties

- Legal duties: comply with the Companies Act 71 of 2008 as amended (the “Act”), MOI provisions, directors’ duties (fiduciary and statutory), financial reporting standards, and disclosure requirements.
- Ethical duties: integrity, independence, transparency, avoidance of conflicts of interest, responsible disclosure, and avoiding misrepresentation.
- The interplay: legal duties set minimum standards; ethical duties promote higher governance, risk management, and stakeholder communication.

2 TYPES OF COMPANIES




Non-Profit Company (“NPC”)

Purpose:

Public benefit, cultural, social, or community objectives. No profit-making objective and thus cannot distribute any surplus to members or directors.

How to recognise:

- Name ends with “NPC”.
- The main objective is non-commercial or non-profit (e.g., charity, sports club, cultural organisation).
- All surplus funds are reinvested into its objectives.

 **Note:** *MOI prohibits profit distribution; income reinvested.
May be exempt from income tax under section 18A of the Income Tax Act 58 of 1962 (“PBO”).*

Private Company (“(Pty) Ltd”)

Purpose:

Profit-making. To provide a separate juristic entity that offers limited liability protection to its shareholders, separating their personal assets from the company's debts.

How to recognise:

- Name ends with “(Pty) Ltd”.
- Cannot offer shares to the public.
- Transfer of shares is restricted in the MOI.
- Companies and Intellectual Property Commission (“CIPC”) listing shows “Private”.

 **Note:** *MOI includes share transfer restrictions.*

Public Company (“Ltd”)

Purpose:

Profit for shareholders, often to raise capital from the public.

How to recognise:

- Name ends with “Ltd” (no “Pty”).
- Shares can be offered to the public.
- Can be listed on a stock exchange.
- Must have at least 3 directors, audited financials, and more stringent governance requirements.

 **Note:** *MOI allows share offers to the public; at least 3 directors and audited financial statements is mandatory.*


Personal Liability Company (“Inc”)

Purpose:

Usually for professional practices (e.g., medical doctors, lawyers, accountants, architects) where directors remain personally liable for debts.

How to recognise:

- Name ends with “Inc”.
- Same restrictions as a private company (no public share offers and share transfer limits).
- MOI states it is a personal liability company, making past and present directors jointly and severally liable for debts during their tenure.

 **Note:** *MOI contains “personal liability” clause; name ends with “Inc” and professional practice structure.*

State-Owned Company (SOC Ltd)

Purpose:

Owned by the government to serve the public interest by providing essential goods and services, developing key economic sectors, and ensuring access to services like utilities and transportation.

How to recognise:

- Name ends with “SOC Ltd”.
- Listed in the Public Finance Management Act 1 of 1999 (“PFMA”) as a public entity or majority owned by the government.
- Examples: Eskom, Transnet.



Note: *Ownership traceable to national/provincial/municipal entity; funding from government within a specified legal framework, including the PFMA.*

3 INCORPORATION AND REGISTRATION OF COMPANIES

WHAT TO PREPARE	WHAT TO CHECK FOR COMPLIANCE
Decide on the company type: Private (Pty Ltd), Public (Ltd), Non-Profit (NPC), Personal Liability (Inc), State-Owned (SOC Ltd)	Company type matches business purpose and complies with director/shareholder rules
Prepare the MOI – choose standard CIPC form or customised version	MOI which is signed by all incorporators; contains required governance provisions
Draft Notice of Incorporation (COR14.1) – include company name, registered office, initial directors, financial year-end, and optional appointments (e.g., auditor, secretary)	Minimum directors: 1 for private/Inc, 3 for public/SOC/NPC; directors must not be disqualified or ineligible in terms of the Act
If MOI contains restrictive conditions or prohibits certain amendments, flag them and add (“RF”) to the name	Restrictive conditions correctly disclosed and (“RF”) placed after name
Attach MOI and Notice of Incorporation for submission to CIPC	Documents complete and in correct form; CIPC fee paid
Pay prescribed CIPC registration fee	Fee matches CIPC schedule for chosen company type
Submit all documents to CIPC (online or physical)	CIPC has confirmed receipt and acceptance for processing
Track CIPC approval process	Any rejections addressed promptly; resubmission if needed
Obtain Registration Certificate from CIPC	Registration number assigned; company appears in Companies Register
Store Registration Certificate and final MOI for records	Certificate date matches intended incorporation date; company can trade immediately

4 COMPANY CONSTITUTIONS – THE MEMORANDUM OF INCORPORATION (“MOI”)

The MOI is the single, founding document of a company under the Companies Act 71 of 2008 as amended (the “Act”). It replaced the old two-document system (i.e., the memorandum of association and articles of association) from the Companies Act 61 of 1973 (the “1973 Act” or the “Old Act”), creating a simpler and more flexible approach to company formation and governance.

Important Note: Apart from alterable provisions or matters required by law and subject to commercial realities and anti-avoidance provisions in sections 6 and 15(2)(a) of the Act, in the case of a conflict between the provisions of the shareholders’ agreement and the MOI, the MOI takes precedence. Thus, the MOI should be updated to reflect the true state intent.

The MOI sets out:

- Rights, duties, and responsibilities of shareholders, directors, and others in relation to the company.
- Rules for managing the company’s internal and external affairs.
- Specific requirements depending on company type (i.e., profit or non-profit).

The MOI contains two types of provisions:

1. Unalterable Provisions

- Mandatory rules from the Act protecting shareholders, creditors, and other stakeholders.
- Cannot be removed or weakened, but can be made more onerous (e.g., higher voting thresholds).
- If the MOI conflicts with these, the conflicting provision is void.
- Anti-avoidance rules prevent attempts to bypass these provisions.

2. Alterable Provisions

- Default rules in the Act that can be changed in the MOI to suit the company’s needs.
- Allow tailoring of governance structures, powers, and procedures.
- Some are “opt-out” (apply unless excluded in the MOI), others are “opt-in” (apply only if included). List of Alterable Provisions, unless the MOI provides otherwise, the Act directs as outlined:

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
1	4(2)(c)	When applying the solvency and liquidity test in respect of a distribution, a person is not to regard as a liability any amount that would be required, if the company were to be liquidated at the time of the distribution, to satisfy the preferential rights upon liquidation of the shareholders whose preferential rights upon liquidation are superior to the preferential rights upon liquidation of those receiving the distribution.
2	15(3)	The board of a company may make, amend or repeal any necessary or incidental rules relating to governance in respect of matters not addressed in the Act or the MOI.
3	16(1), read with 16(2)	An MOI may be amended if a special resolution to amend it is proposed by the board of the company or shareholders entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution. The MOI may contain different requirements than the aforementioned with respect to the proposal of amendments.
4	19(1)(b)(ii)	A company has all the powers and capacity of an individual.
5	19(2)	A person is not, solely because of being an incorporator, shareholder or director, liable for any liabilities or obligations of the company.
6	26(3)	The MOI of a company may establish additional information rights of any person with respect to any information pertaining to the company.
7	30(2)(b)(ii)(aa)	The annual financial statements of any company other than a public company (if not required to have an audit) may be audited voluntarily if the MOI or a shareholders' resolution so requires or if the company's board has so determined.
8	34(2)	A private, personal liability or non-profit company is not required to comply with the extended accountability requirements set out in Chapter 3.
9	35(6)(a)	Despite the repeal of the Companies Act, 1973 (Act 61 of 1973), a share issued by a pre-existing company, and held by a shareholder immediately before the effective date, continues to have all the rights associated with it immediately before the effective date, irrespective of whether those rights existed in terms of the company's Memorandum of Incorporation, or in terms of that Act, subject only to – (a) amendments to that company's Memorandum of Incorporation after the effective date.
10	36(2)(b)	The authorisation, classification, number of shares and the preferences, rights and limitations of each class of share, as set out in the MOI, may be changed by the board of a company.
11	36(3)	The board of a company can increase or decrease the number of authorised shares of any class, reclassify classified shares that have been authorised but not issued, classify the unclassified authorised shares, and determine preferences, rights, limitations or other terms pertaining to unclassified shares.
12	37(2)	Each share has "one" general voting right.

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
13	39(1)(a)	The provisions of S39 do not apply to a public company or a state-owned company.
14	39(2), read with 39(3)	If a private company proposes to issue any shares, other than as contemplated in S39(1)(b), each shareholder of a private company has a right to be offered, and within a reasonable time to subscribe for, a percentage of the shares to be issued equal to the voting power of that shareholder's general voting rights immediately before the offer was made.
15	39(4)	A shareholder may take up fewer shares than those he would have been entitled to subscribe for and shares not subscribed for within a reasonable time may be offered to other persons.
16	43(2)(a)	The board of a company may authorise the company to issue a secured or unsecured debt instrument at any time.
17	43(3)	A debt instrument may grant special privileges to the holder of the instrument regarding attending and voting at general meetings, appointing of directors or allotment of securities, etc.
18	44(2)	The board may authorise the company to provide financial assistance by way of a loan, guarantee, security, etc. to any person for the purposes of subscription for or purchase of any securities of the company.
19	45(2)	The board may authorise the company to provide direct or indirect loans or other financial assistance to a director or prescribed officer of the company or related or interrelated company.
20	47(1)	The board of a company, by resolution, may approve the issuing of capitalisation shares and may permit any shareholder entitled to receive such capitalisation shares to elect instead to receive a cash payment.
21	56(1)	The company's issued securities may be held by, and registered in the name of, one person for the beneficial interest of another person.
22	57(3)	If a profit company, other than a state-owned company, has only one director, the director may exercise any power or perform any function of the board at any time, without notice or compliance with any other internal formalities.
23	57(4)(a)	If every shareholder is also a director of a company, any matter referred by the board to the shareholders for decision may be decided by the shareholders without notice or compliance with any other internal formalities.
24	58(3)	A shareholder of a company may appoint two or more proxies, a proxy may delegate his authority to another person, and a copy of the proxy must be delivered to the company before the proxy exercises any rights.
25	58(7)	A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the MOI, or the instrument appointing the proxy, provides otherwise.

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
26	59(3)	If the board does not determine a record date, in the case of a meeting, the record date is the latest date by which the company is required to give shareholders notice of that meeting or the date of the action or event, in any other case.
27	61(3), read with 61(4)	The board must call a shareholders' meeting if one or more written and signed demands are delivered and in aggregate demands for the same purpose are made by holders of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed. The MOI may specify a percentage lower than 10%.
28	61(9)	The board of the company may determine the location for any shareholders' meeting of the company and a shareholders' meeting of the company may be held in the Republic or in any foreign country.
29	62(1), read with 62(2)	Notice of each shareholders' meeting must be delivered at least 15 business days before the meeting is to begin, in the case of a public company or non-profit organisation that has voting rights, or 10 business days in any other case.
30	63(2)	A shareholders' meeting may be conducted entirely or partially by electronic communication.
31	64(1), read with 64(2)	A shareholders' meeting may not begin until at least 25% of persons holding all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting are present and no matter to be decided may begin to be considered unless at least 25% of all voting rights that are entitled to be exercised on that matter are present. The MOI may specify a percentage lower or higher than 25% in either or both instances.
32	64(4) and (5), read with 64(6)	If within one hour after the appointed time for a meeting to begin a quorum is not present, the meeting is postponed for one week and the person intended to preside over the meeting may extend the one-hour limit for a reasonable period. The MOI may provide for a longer or shorter period in respect of either or both of the one-hour or one-week periods.
33	64(9)	Unless the MOI provides otherwise, after a quorum has been established for a meeting, the meeting may continue or the matter may be considered, so long as at least one shareholder with voting rights entitled to be exercised at the meeting is present.
34	64(12), read with 64(13)	A meeting may not be adjourned beyond 120 business days after the record date or 60 business days after the date on which the adjournment occurred. The MOI may provide for different maximum periods of adjournment of meeting or for unlimited adjournment of meetings.

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
35	65(8)	For an ordinary resolution to be approved by shareholders, it must be supported by more than 50% of the voting rights exercised on the resolution. The MOI may specify one or more higher percentages than 50%. There must always be a margin of at least 10% between the highest requirement for an ordinary resolution and the lowest established requirement for approval for a special resolution.
36	65(9) and (10)	For a special resolution to be approved by shareholders, it must be supported by at least 75% of the voting rights exercised on the resolution. The MOI may specify one or more different percentages than 75% (i.e., either higher or lower). There must always be a margin of at least 10% between the highest requirement for an ordinary resolution and the lowest established requirement for approval of a special resolution.
37	66(1)	The business and affairs of a company must be managed by or under the direction of the board, which has the authority to exercise all the powers and perform any of the functions of the company.
38	66(2) and (3)	The board of a company must comprise (in the case of a private company) at least one director. (The MOI may specify a higher number than the minimum number of directors.)
39	66(4)	A company's MOI may provide for – <ul style="list-style-type: none"> • The direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the MOI; • A person to be an ex officio director of the company because of that person's holding some other office, title, designation or similar status, subject to S66(5)(a); • The appointment or election of one or more persons as alternate directors of the company.
40	66(4)(a)(ii), read with 66(5)(b)(i)	A person who holds office or acts in the capacity of an ex officio director of a company has all the powers and functions of any other director.
41	66(8)	The company may pay remuneration to its directors for their services as directors.
42	66(12)	Any director may be appointed to more than one committee of the company and, when calculating the minimum number of directors required, any such director who has been appointed to more than one committee must be counted only once.
43	68(1)	A director's appointment is indefinite.
44	68(2)	Unless the MOI provides otherwise, for a profit company in any election of directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all the vacancies on the board at that time have been filled and each vote entitled to be exercised is exercised once and the vacancy is filled if a majority of voting rights supports the candidate.

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
45	68(3)	The board may appoint a person who satisfies the requirements for election to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled.
46	69(6)	In addition to the provisions of S69, the MOI may impose additional grounds of ineligibility or disqualification of directors or minimum qualifications to be met by directors.
47	72(1)	The board may appoint any number of committees of directors and delegate to any committee any of the authority of the board.
48	72(2)	A board committee may include persons who are not directors of the company, may receive advice from any person and has full authority of the board in respect of matters referred to it.
49	73(1), read with 73(2)	A director authorised by the board of a company must call a board meeting if required to do so by at least 25% of the directors (in the case of a board that has at least 12 members) or two directors in any other case. The MOI may specify a percentage higher or lower than 25% or two directors.
50	73(3)	A meeting of the board may be conducted by electronic communication.
51	73(5)	<ul style="list-style-type: none"> • If all the directors of a company acknowledge actual receipt of notice of a meeting and are present at the meeting, or waive notice, the meeting of directors may proceed despite failure to give requisite notice or a defect in the notice; • A majority of directors must be present at a meeting before a vote may be called; • Each director has one vote on a matter before the board; • A majority of the votes cast on a resolution is sufficient to approve that resolution; • In the case of a tied vote the chair may cast a deciding vote if the chair did not initially have or cast a vote or the matter being voted on fails in any other case.
52	74(1)	A decision that could be voted on at a meeting of the board of a company may instead be adopted by written consent of a majority of the directors, provided that each director has received notice of the matter to be decided.
53	78(4), (5) and (7)	The company may (with certain exceptions) advance expenses to a director to defend litigation in any proceedings arising out of his services and may directly or indirectly indemnify him for these expenses and take out insurance to protect the director or the company.

NO.	SECTION	ALTERABLE PROVISION (TO BE ALTERED IN THE MOI)
54	84(1)(c)	This Chapter applies to ... a private company, a personal liability company or a non-profit company – (i) if the company is required by this Act or the regulations to have its annual financial statements audited every year: Provided that the provisions of Parts B and D of this Chapter will not apply to any such company; or (ii) otherwise, only to the extent that the company’s Memorandum of Incorporation so requires, as contemplated in section 34(2).
55	115(2)(a)	A proposed transaction contemplated in subsection (1) must be approved – (a) by a special resolution adopted by persons entitled to exercise voting rights on such a matter, at a meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% of all the voting rights that are entitled to be exercised on that matter, or any higher percentage as may be required by the company’s Memorandum of Incorporation, as contemplated in section 64(2) ...
56	Schedule 1 item 1(8)	The vote of each member of a non-profit organisation is of equal value to the vote of each other voting member on any matter to be determined by vote of members.
57	Schedule 1 item 4(1)	A non-profit company is not required to have members, but its MOI may provide for it to do so.
58	Schedule 5 item 4(4)	During the period of two years immediately following the general effective date – (a) if there is a conflict between – (i) a provision of this Act, and a provision of a pre-existing company’s Memorandum of Incorporation, the latter provision prevails, except to the extent that this Schedule provides otherwise; (ii) a binding provision contemplated in subitem (3), and this Act, the binding provision prevails; or (iii) a provision of an agreement contemplated in subitem (3A), and this Act or the company’s Memorandum of Incorporation, the provision of the agreement prevails, except to the extent that the agreement, or the Memorandum of Incorporation, provides otherwise.
59	Schedule 5 item 7(1)	A person holding office as a director, prescribed officer, company secretary or auditor of a pre-existing company immediately before the effective date continues to hold that office as from the effective date, subject to the company’s Memorandum of Incorporation, and this Act.

Companies can also add provisions on matters not covered by the Act, impose restrictive conditions, or prohibit amendments to specific clauses entirely.

Restrictive Conditions and Ring-Fencing (“RF”)

The MOI may include:

- Restrictive conditions (e.g., limiting company activities or director powers).
- Additional requirements for amending these conditions, or outright prohibition of amendments.
- If restrictive conditions exist, they must be disclosed in the Notice of Incorporation and (“RF”) added to the company name.
- Third parties are deemed to have notice of these restrictions (limited application of the doctrine of constructive notice). RF provisions can limit a third party’s ability to rely on ostensible authority if they conflict with entrenched rules.

Amending the MOI

- Typically requires a special resolution (with 75% approval, unless otherwise specified in the MOI).
- Can be initiated by the board or shareholders holding at least 10% of voting rights.
- Voting may be at a meeting or in writing (saves costs).
- MOI can increase or decrease the special resolution threshold (with limits).
- Some provisions may have extra requirements for amendment or be unalterable.

Other amendment methods:

- Court order (no shareholder approval needed).
- Board action under section 36(3) and 36(4) of the Act for share authorisation/classification.

Amendments take effect once the Notice of Amendment (COR 15.2) is filed with the CIPC.

Key practical points:

- The MOI must always comply with the Act – unalterable provisions are non-negotiable.
- Use alterable provisions to tailor governance to the business model with advice and guidance from a suitably qualified legal professional.
- Consider entrenching critical rules through restrictive conditions or prohibitions on amendment but note the implications for dealings with outsiders.
- Maintain clarity in the MOI to avoid disputes and ensure compliance with the Act, JSE Listings Requirements (if listed), and other regulations.

5 ALTERATION OF COMPANY STRUCTURES: SHARES AND CHANGES IN SHARE CAPITAL

Rights of Shareholders

1. Each share generally carries one vote, unless the MOI specifies otherwise.
2. Shareholders are (generally) entitled to dividends.
3. Preference shares may only receive dividends as declared, provided that solvency and liquidity requirements are met. Unless specified otherwise in the MOI, preference shares only have preference for dividends, not necessarily for return of capital.
4. Shareholders have rights under section 164, have appraisal rights if their rights are materially and adversely altered.

Classes of Shares

- Companies may issue different classes of shares with distinct rights, preferences, limitations, and terms.
- Common bases for classifying classes include dividends, voting rights, and liquidation preferences.
- Rights may also include conversion rights (e.g., the right to convert to another class).
- All shares of a particular class must have identical rights and terms.

Categories

1. Preference shares

- Priority over ordinary shares for dividends and, on occasion, capital on liquidation. May be:
- Cumulative, which means unpaid dividends build up over time for future payment.
- Participating preference shares, on the other hand, entitle their holders to the fixed percentage preference dividend and to a share in the residual distributable profits. Rights are defined in the MOI.

2. Redeemable shares

Redemption terms are flexible, subject to the requirements of sections 46 and 48 of the Act. A redemption of shares is a repurchase not considered debt, even if redemption creates a claim for payment. It typically operates:

- Allowing shares of that class to be redeemed by the company, shareholder, or another person at any time or upon specific contingencies.
- For cash, debt, securities, or other property.
- At prices and in amounts specified, or determined according to a formula; or
- Subject to any other terms outlined in the company's Memorandum of Incorporation.

3. Ordinary shares

Fully participate in dividends, capital, and surplus assets upon winding-up. Where preference shares exist, ordinary shares hold the residual rights regarding dividends and/or repayment of capital.

4. Deferred shares

Deferred shares are rare; dividend rights are deferred until ordinary shareholders receive a predetermined minimum amount.

Historically, deferred shares have usually been issued as remuneration for promoters for services rendered in the formation of the company (founders' shares) or persons who have sold assets, including a business as a going concern, to the company (vendors' shares).

Authorisation of Shares

Section 36 of the Act determines that the MOI must set out the classes of shares, and the number of shares of each class, that the company is authorised to issue. In respect to each class of shares, the following must be set out:

1. A distinguishing designation for that class, and
2. The preferences, rights, limitations, and other terms related to that class, but may also specify a class of shares without defining the associated preferences, rights, limitations, or other terms of that class. The board of the company must determine these details and may authorise a specific number of unclassified shares, which are subject to classification by the board. Unclassified shares must not be issued until the board has decided on their associated preferences, rights, limitations, or other terms.



Note: Any changes by the board must be filed with the CIPC (amendment of the MOI).

Authority to Issue Shares

Section 38 of the Act provides the board of directors with the general authority to issue shares without shareholder approval, provided that the shares are authorised and adequate consideration was received. Additionally, the board must act within their fiduciary duties, ensuring the share issue is for the company's benefit and properly justified.

Unauthorised shares may be authorised within 60 business days. After this, the issue is null and void, and consideration must be returned.

Situations requiring shareholder approval (special resolution under section 41 of the Act):

- Issue to directors, prescribed officers, or related persons.
- Issue affecting $\geq 30\%$ of voting power in a class (or integrated transactions).



Note: *Exceptions not requiring approval include pre-emptive rights, public offers, employee schemes, and underwriting agreements.*

6 ALTERATION OF COMPANY STRUCTURES: STEP-BY-STEP GUIDELINE ON THE CONVERSION OF COMPANIES

Step 1: Determine if Conversion is Permissible

- Confirm that the proposed conversion is legally permitted.
- For example, a non-profit company cannot convert into a profit company. However, profit companies may be converted between the four categories (private, public, personal liability, and state-owned).

Step 2: Review the Current MOI

The conversion is effected through an amendment of the MOI.

Identify which provisions must be amended so that the company's MOI complies with the requirements of the target category. It is advisable to seek advice and guidance from a suitably qualified specialist legal professional.

Example:

A private company (Pty Ltd) converting to a public company (Ltd) would need to amend provisions regarding shareholder limits, share transferability, and other relevant matters. A personal liability company (Inc.) removing the joint and several liability clause.

With the assistance of a suitably qualified legal professional, draft the proposed MOI amendments and convene a shareholders' meeting to pass a special resolution approving the amendments.

Specific Obligations for Personal Liability Companies: If the conversion involves a personal liability company converting to another type of company. Provide 10 business days' advance notice of the amendment filing to:

- Relevant professional or industry regulatory authorities.
- Any parties who may have relied on the directors' joint and several liability in dealings with the company.
- Any person adversely affected by the termination of such liability.



Note: *These parties may apply to the court for protective measures if their interests are prejudiced.*

Step 3: Amend the Company Name

If the category changes, the company name ending must reflect the new type:

- “(Pty) Ltd” → “Ltd” for a public company.
- “Inc.” → “(Pty) Ltd” or “Ltd”, depending on the conversion.

Ensure that the MOI and name amendment are filed together with the CIPC.

Step 4: File the Notice of Amendment with CIPC

File the following with the CIPC:

- The amended MOI.
- The special resolution.
- Supporting documents (e.g., proof of notices sent in case of a personal liability company).

The CIPC will register the amendment and issue confirmation.

Step 5: Update Company Records

- Share certificates, registers, and internal records.
- Stationery, letterheads, contracts, and branding with the new company name.
- Notify banks, SARS, and other stakeholders of the conversion.

Legal Effect of Conversion

The company continues as the same juristic person – conversion does not affect its existence. Debts, liabilities, rights, and obligations remain unchanged. Legal proceedings may continue under the company’s new name.

7 SHAREHOLDERS: RIGHTS AND RESOLUTIONS

Who Is a Shareholder?

Section 1 defines a shareholder as “the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be.”

Under section 57(1) a shareholder is defined as having the abovementioned meaning, but also includes “a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached.”

Securities Register

Every company is required to maintain a securities register (section 50).

Recognition as a shareholder requires:

- Holding at least one share; and
- Being entered into the securities register.

Shareholder Resolutions

- Ordinary resolution = >50% of votes exercised.
- Special resolution = 75% (or MOI % within 10% of ordinary resolution).

Special resolutions are required for:

SECTION NUMBER	SECTION HEADING	RESOLUTION AND TEST REQUIRED
Section 13(6)	Transfer of the registration of a foreign company to South Africa.	“Equivalent” of a special resolution by shareholders is required if the country of origin does not have another mechanism for the shareholders of the company to approve the transfer of the registration of the company.

SECTION NUMBER	SECTION HEADING	RESOLUTION AND TEST REQUIRED
Section 16(1)(c)	<p>Notice of Amendment to the Memorandum of Incorporation</p> <ul style="list-style-type: none"> • New MOI • Name change • Delete/alter/replace provisions • New provisions • Alterations. 	Special resolution of the company setting out the amendment to the Memorandum of Incorporation.
Section 18(1)(b)	Authenticity of versions of MOI.	Special resolution at shareholders' meeting Ratification of a consolidated version of the MOI.
Section 20(2)	Validity of company actions.	Special resolution by shareholders ratification of actions above the directors' authority.
Section 36(2)(a)	Authorisation and classification of shares; number of authorised shares of each class; preferences, rights and limitations, and other terms associated with each class of shares.	Special resolution by shareholders (note, however, that the board may also take these actions without a special resolution, unless prohibited by the MOI).
Section 41(1)	Shareholder approval for issuing shares in certain cases, for example, to directors and related companies.	Special resolution by shareholders' approval of issue of shares or grant of rights
Section 41(3)	Shareholders' approval – if the voting power of the class of shares that is issued or issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% of the voting power of all the shares of that class held by shareholders immediately before the transaction or series of transactions.	Special resolution by shareholders.
Section 44(3)(a)(ii)	Financial assistance for subscription of securities.	Special resolution by shareholders within previous two years.
Section 45(3)(a)(ii)	Financial assistance to directors and related third parties.	Special resolution by shareholders within previous two years.

SECTION NUMBER	SECTION HEADING	RESOLUTION AND TEST REQUIRED
Section 48(8)(a)	Company or subsidiary acquiring company's shares from a director, prescribed officer, or related persons. However, it does not apply to a company providing financial assistance to, or for the benefit of, its subsidiaries, as defined in the Act. Note: this exemption does not apply to a beneficiary that otherwise meets the definition of a subsidiary but is a foreign entity.	Special resolution by shareholders.
Section 66(9)	Board, directors, and prescribed officers.	Special resolution by shareholders payment of remuneration approved by special resolution within two years.
Section 80 and Regulation 40(1)	Notice of resolution to wind-up solvent company.	Special resolution by shareholders for voluntary winding-up.
Section 81(1)(a)(i)	Winding-up by court order.	Special resolution by shareholders.
Section 82(5)	Deregistration, special resolution to transfer registration.	Special resolution by shareholders.
Section 164(9)(c)	Revoking a previously adopted resolution that gave rise to appraisal rights in terms of S164.	Special resolution by shareholders.
Schedule 5, item 6; Regulation 31(6) and 31(8)(b)	Notice to convert par value shares.	Special resolution by shareholders. Approval of any fundamental transaction.

 **Note:** The MOI of a company may stipulate further matters that require special resolutions.

Matters requiring an Ordinary Resolution in terms of the Act:

SECTION	DESCRIPTION
66(4)	Electing at least 50% of the directors and at least 50% of the alternate directors.
71(1)	Removing directors.
75(3)	Approving a contract in which a director has a personal financial interest, where there is only one director.
75(7)	Approving a contract in which a director has not made prior disclosure of a personal financial interest.
80(5) and (6)	Giving certain directions to a liquidator in a voluntary winding-up of a solvent company.
90(1)	Appointing auditors, where the company is required to be audited.
94(2)	Appointing an audit committee if the company is required in terms of the Act to have an audit committee.
103(2)	Varying an agreement attached to a prospectus.
152(3)	Approving a business rescue plan to the extent that such a plan alters the rights of the shareholders.



Note: *The MOI of a company may stipulate further matters that require ordinary resolutions.*

Minority Protections

Section 163 – Relief from Oppressive or Prejudicial Conduct

Available to shareholders and directors.

Grounds for application:

- Acts/omissions of the company or related person oppressive or unfairly prejudicial.
- Business conduct that is oppressive or unfairly prejudicial.
- Exercise of director/prescribed officer powers that is oppressive or unfairly prejudicial.

Court may grant wide-ranging relief (interim or final) tailored to protect the applicant's interests.

Focus: fairness, equity, and interests – not limited to unlawful conduct.

Common in smaller private companies/quasi-partnerships, where exit is difficult due to restricted share transferability.

Section 164 – Appraisal Rights

Arise when a shareholder dissents from certain fundamental transactions (e.g., mergers, major asset disposals).

Dissenting shareholder may:

- Demand the company buy back shares at fair value.
- Relinquish all other shareholder rights except the right to payment.

Overlap Between Oppression and Appraisal Remedies

Not mutually exclusive. A shareholder may:

- Use appraisal remedy if the main concern is to exit and receive fair value.
- Use oppression remedy to remain a shareholder or seek broader relief for unfair prejudice.

Appraisal remedy = limited to fair value of shares.

Oppression remedy = court may craft any order necessary (much wider scope).

8 DIRECTORS: APPOINTMENT, POWERS, DUTIES, AND LIABILITY

Increasingly, directors are expected to meet higher standards, as reflected in both the Act and the King IV Report on Governance for South Africa 2016. In this context, some individuals may attempt to avoid being formally classified as directors. Properly identifying directors is therefore critical to ensuring accountability for their conduct in managing the company's affairs.

- Only natural persons may be appointed (section 69).
- Ineligible persons: *juristic persons, unemancipated minors, persons under legal disability.*

Disqualified persons include:

- Declared delinquent by court.
- Unrehabilitated insolvents.
- Convicted of theft, fraud, forgery, perjury, or dishonesty-related offences (section 69(8)(b)(iv)).
- Removed from office of trust for dishonesty.

 **Note:** *The MOI may set extra requirements (e.g., qualifications, experience).*

Powers of Directors

Section 66(1): The board manages the business and affairs of the company.
The powers of directors are original, not delegated by shareholders.

Powers extend to the below, but are subject to (aka limited by) the Act and the MOI:

- Strategic and operational decisions.
- Entering contracts.
- Instituting or defending legal proceedings.

Duties of Directors

Directors' duties are based on common law and statute.

Common Law Duties

Common law duties require directors to act in the company's best interests, based on loyalty, good faith, and avoiding conflicts of interest. These fiduciary duties include, but are not limited to, the following:

- Performing their duties with care and skill and exercising the level of skill that can reasonably be expected from a person with their knowledge and experience.
- Carrying out their duties with proper diligence, which would imply attending meetings, staying informed, and taking steps to guide and monitor the company's affairs.
- Acting in the best interest of the company.
- Acting within their scope of authority and for a proper purpose.
- Exercising proper judgment.
- A director must avoid conflicts of interest and must not place himself or herself in a position where personal interests' conflict, or may possibly conflict, with duties to the company.
- A director must not derive any secret profit or personal gain from his or her position as director unless duly authorised.

The Act has partially codified the common law fiduciary duties. If the Act does not cater for an instance, then the common law will prevail – in all other instances, the Act is the determining authority.

Statutory Duties

Section 75

- Avoid conflicts of interest.
- A director who is interested in a contract or proposed contract must declare the nature and extent of that interest at a board meeting before the matter is considered. The director must disclose any material information known to them and may provide observations or insights if requested.
- The director must then recuse him/herself from decision-making on the matter.



Note: *Disclosure under section 75 is mandatory.*

Section 76

- Act in good faith and in the best interests of the company.
- Use company property and opportunities only for the company's benefit.
- Act for a proper purpose. Powers may only be used for the reason they were given, not for collateral or ulterior motives.

- Exercise reasonable care, skill, and diligence. Must act with the degree of care, skill and diligence that may reasonably be expected of a person with similar knowledge, skill and experience.
- Directors must exercise their own minds and not act as “puppets” of others (including nominators or dominant shareholders).

Liability of Directors

Personal liability arises inter alia when:

- Breach director duties (section 77).
- Trade recklessly or under insolvent circumstances (section 22).
- Authorise prohibited distributions (section 46).

Joint and several liability applies in certain cases (e.g., personal liability companies). Court may relieve a director from liability if they acted honestly and reasonably (section 77(9)).

9 IXBRL AND FAS MEANING AND APPLICATION

When filing an Annual Return via the CIPC, companies must provide financial information in one of two ways:

1. Annual Financial Statements (“AFS”) in iXBRL format.
2. Financial Accountability Supplement (“FAS”) – a simpler online form capturing key financial data.

When to Submit AFS in iXBRL Format

Submit iXBRL AFS if the company is required by law to produce audited AFS. This includes:

- All public companies.
- Companies with an MOI requirement to audit or voluntarily audit their AFS.
- Companies with a Public Interest Score (“PIS”) ≥ 350 .
- Companies with a PIS ≥ 100 whose AFS is internally compiled.
- Companies that hold assets in a fiduciary capacity for unrelated parties, exceeding R5 million at any time in the year.
- State-owned companies reporting under IFRS.

 **Note:** *Companies below a PIS of 350 must still check if other criteria apply (MOI or fiduciary assets).*

Voluntary audits or independent reviews: Submission in iXBRL is optional, not required.


When to Submit a Financial Accountability Supplement (FAS): Companies not required to submit AFS in iXBRL must submit financial information through the FAS online form. This is simpler and collects basic financial details.

10 PUBLIC INTEREST SCORE (“PIS”)

Purpose: Required by Regulation 26. Determines audit/independent review requirements and accounting framework.

PIS Calculation

COMPONENT	HOW TO COUNT	POINTS
Employees	Average number of employees (salaried: monthly, wages: weekly)	1 per employee
Third-Party Liabilities	Exclude shareholder/group loans and deferred tax	1 per R1 million (or part)
Turnover/Revenue	As defined in Financial Reporting Standards	1 per R1 million (or part)
Direct or Indirect Beneficial Interest	Profit company: each shareholder direct or indirect beneficial interest; Non-profit: each member or member of member association.	1 per person

 **Note:** Regulation 26 (read with Regulations 27-29) requires one point in the PIS for each person with a direct or indirect beneficial interest. Shareholders of a holding company should not be counted for its subsidiaries if such shareholders have no rights to distributions, securities, or voting in the subsidiary. They are only included if an agreement grants them beneficial ownership in the subsidiary's shares. For shares held by a trust, however, it remains common practice that individual beneficiaries of the trust must be counted, subject to the trust deed's terms.

Owner-Managed Entity (OME)

- All shareholders are also directors, OR
- Single shareholder holds all beneficial interest and is a director, OR
- Trust: all beneficiaries are directors.
- Juristic person shareholders exclude the company from being OME.

Review/Audit Requirements by PIS


Private Companies

PI SCORE	NON-OWNER MANAGED (INTERNALLY)	NON-OWNER MANAGED (INDEPENDENTLY)	OWNER MANAGED (INTERNALLY)	OWNER MANAGED (INDEPENDENTLY)
350+	Audit/IRIFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs
100–349	Audit/IRIFRS or IFRS for SMEs or SA GAAP	Audit IFRS or IFRS for SMEs or SA GAAP	IRIFRS or IFRS for SMEs or SA GAAP	Audit / No Audit or IRIFRS or IFRS for SMEs or SA GAAP
<100	Audit/IRIFRS as determined by the company	IRIFRS or IFRS for SMEs or SA GAAP	IRIFRS as determined by the company	No Audit or IRIFRS or IFRS for SMEs or SA GAAP

Non-Profit Companies

PI SCORE	NON-OWNER MANAGED (INTERNALLY)	NON-OWNER MANAGED (INDEPENDENTLY)	OWNER MANAGED (INTERNALLY)	OWNER MANAGED (INDEPENDENTLY)
350+	Audit/IRIFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs	Audit IFRS or IFRS for SMEs
100–349	Audit/IRIFRS or IFRS for SMEs or SA GAAP	Audit IFRS or IFRS for SMEs or SA GAAP	IRIFRS or IFRS for SMEs or SA GAAP	Audit / No Audit or IRIFRS or IFRS for SMEs or SA GAAP
<100	Audit/IRIFRS as determined by the company	IRIFRS or IFRS for SMEs or SA GAAP	IRIFRS as determined by the company	No Audit or IRIFRS or IFRS for SMEs or SA GAAP

¹

 **Note:** An audit is required if: it is stipulated in the MOI that a company should be audited; or the company holds assets over R5 million fiduciary in its primary business.

¹ SAICA Companies Act Guide Issued: 2020

Illustrative Example: Calculating the Public Interest Score (PIS)

Background

ABC (Pty) Ltd is a privately owned South African company operating in the construction and maintenance industry. The company is not part of a listed group but has multiple shareholders and employs a medium-sized (under 50) workforce. The financial year-end is 28 February 2025.

The directors of ABC (Pty) Ltd need to determine whether the company requires an audit or an independent review in terms of Regulation 29 of the Companies Regulations, which depends on the Public Interest Score (PIS).

Step 1: Gather Relevant Information

COMPONENT	DESCRIPTION	VALUE/INFORMATION FOR FY 2025
Employees	Average number of full-time employees during the financial year	42
Third-Party Liabilities	Total liabilities excluding shareholder loans and deferred tax	R18,250,000
Turnover/ Revenue	Total revenue per financial statements	R27,800,000
Beneficial Interest Holders	Shareholders and beneficial owners (trust beneficiaries, etc.)	6 individuals (3 direct shareholders and 3 indirect via a family trust) <i>Note: All beneficiaries are not directors.</i>

Step 2: Apply the PIS Formula

COMPONENT	HOW TO COUNT	CALCULATION	POINTS
Employees	1 point per employee (average for the year)	42×1	42
Third-Party Liabilities	1 point per R1 million (or part thereof)	$R18,250,000 \div R1,000,000 = 19$ (rounded up)	19
Turnover/ Revenue	1 point per R1 million (or part thereof)	$R27,800,000 \div R1,000,000 = 28$ (rounded up)	28
Beneficial Interests	1 point per shareholder or person with a direct/indirect beneficial interest	6×1	6

Step 3: Total Public Interest Score

| **Total PIS** | 42 + 19 + 28 + 6 = **95** |

Step 4: Interpretation and Compliance Requirements

According to Regulation 29(4) of the Companies Regulations, 2011:

PIS RANGE	REVIEW/AUDIT REQUIREMENT	APPLICABLE ACCOUNTING FRAMEWORK
PIS < 100	Independent review (if not owner-managed)	IFRS for SMEs or Micro GAAP
PIS ≥ 100 but < 350	Independent review (unless public interest dictates audit)	IFRS for SMEs
PIS ≥ 350 or company holds fiduciary assets > R5 million	Mandatory audit	Full IFRS

In ABC (Pty) Ltd's case, the **PIS = 95**, which means:

- The company is not automatically subject to an audit.
- Since it is not owner-managed (multiple shareholders), an independent review is required.
- It may prepare financial statements under **IFRS for SMEs**.

Step 5: Notes on Special Considerations

1. Beneficial Interest via Trusts:

- The 3 shareholders hold shares via a family trust. Not all beneficiaries are directors.
- The trust deed grants beneficiaries rights to income distributions; therefore, each beneficiary must be included in the PIS count.
(See *Regulation 26(2)(d)* and related guidance in the CIPC Guidance Note 3 of 2011.)

2. Exclusion of Shareholder Loans:

- Loans from shareholders or group entities are excluded when calculating third-party liabilities.
(See *Regulation 26(2)(b)*.)

3. Rounding Up Rule:

- When calculating turnover and liabilities, any part of R1 million counts as a full point.
(See *Regulation 26(2)(b)-(c)*.)

11 FINANCIAL STATEMENT REQUIREMENTS

IFRS: Global accounting standards for consistent, comparable financial reporting across countries.

IFRS for SMEs: Simplified version of IFRS for small and medium-sized enterprises, reducing complexity and disclosure requirements.

Key Differences

ASPECT	FULL IFRS	IFRS FOR SMES
Complexity and Volume	Many standards and interpretations; complex	Single standard; simplified
Disclosure Requirements	Extensive; designed for diverse stakeholders	Minimal; focused on SME users' needs
Recognition and Measurement	Complex rules (e.g., IAS 39 / IFRS 9 for financial instruments)	Simplified rules; e.g., investments measured at cost less impairment or fair value through profit or loss

Example:

SME with equity investments:

- *Full IFRS: Classify as FVTPL, FVTOCI, or amortized cost; profit impacted by classification.*
- *IFRS for SMEs: Typically measured at cost less impairment or fair value through profit/loss; simpler and more predictable accounting.*

When to Use

- Full IFRS: Large, complex businesses needing comprehensive reporting for multiple stakeholders.
- IFRS for SMEs: Smaller businesses; cost-effective, easier to apply, meets primary user needs.

12 COMPANY RECORDS AND ACCESS TO INFORMATION

Core Records

RECORD	RETENTION PERIOD / NOTES
MOI and all amendments	Indefinite
Company rules (as per MOI)	Indefinite
Share register / securities register	Indefinite
Records of company secretary and auditor	For as long as they are in office, thereafter subject to general retention rules

Director Records (retain for 7 years after cessation)

Include for each director (past and present):

- Full name and former names
- Identity number or date of birth
- Nationality and passport (if non-South African)
- Occupation
- Date of most recent appointment/election
- Other directorships (company name and registration)
- Address for service
- Qualifications and experience (if required, e.g., for audit committee)

Financial and Meeting Records (7 years minimum)

- Financials: accounting records, annual financial statements, audit working papers, AGM reports.
- Meeting documentation: notices, agendas, minutes, resolutions, materials distributed to shareholders and directors.
- Board and committee records: minutes and resolutions for board, audit committee, other committees.

Who Can Access

CATEGORY	RECORDS ACCESSIBLE	LEGAL BASIS / NOTES
Shareholders / Beneficial Owners	- Memorandum of Incorporation (MOI) - Director records - Meeting notices, minutes, resolutions - Financial statements - Registers (e.g., shareholders, securities)	Entitled to inspect or copy under Companies Act, section 26
Public (Non-Members)	- MOI - Records of directors - Annual financial statements - Meeting notices, minutes, resolutions - Share / securities registers (subject to thresholds)	Under amended section 26 : any person may request and inspect/copy without using PAIA or showing motive

How to Access / Procedure

- Formal request must be made to company (in writing).
- The company must respond within **10 business days** to comply with the request.
- The company must allow inspection at its records location, or provide copies (subject to a nominal fee).

13 MEETING REQUIREMENTS

Companies

Shareholders' Meetings

Notice of Meetings

- Notice must be delivered to all shareholders as of the record date. Electronic notices are allowed if they can be conveniently printed.
- Irregular or defective notice may invalidate resolutions.
- **Notice period:**
 - Public or non-profit companies: at least 15 business days.
 - Other companies: at least 10 business days.
 - MOI can alter these periods.
 - Shorter notice is allowed if all shareholders entitled to vote are present and waive the requirement.

Content of Notice

- Date, time, location, and record date.
- General and specific purposes of the meeting.
- Proposed resolutions and required voting percentages.
- Proxy information: shareholders may appoint proxies, who do not need to be shareholders, and identification is required at the meeting.
- AGM-specific: financial statements or summaries, with instructions to access full statements.

Defects in Notice

Material defects: require ratification by all present shareholders.

Severable defects: defective items may be severed; the rest of the agenda remains valid.

Immaterial defects: minor delivery failures do not invalidate the meeting.

Attendance may constitute waiver of notice unless a material defect is challenged.

Conduct of Meetings

- Location is determined by the board; can be in South Africa or abroad unless restricted by MOI.
- Shareholders have the right to vote and speak; identification is required.
- Electronic participation is allowed if all participants can communicate simultaneously and effectively.

Voting

- By show of hands (one vote per person) or poll (weighted by shareholding).
- Poll can be demanded by a minimum number of voters or percentage of voting rights.
- Majority votes must not oppress minority shareholders.

Quorum

- Minimum presence: generally, at least 25% of voting rights, or as specified in MOI.
- Once quorum is met, the meeting may continue even if it drops below the minimum.
- Companies with more than two shareholders must have at least three shareholders present.

Postponement and Adjournment

- Postponement: deferring a meeting before it starts.
- Adjournment: suspending a meeting to resume later.
- If quorum is not met, meetings may be postponed or resumed with shareholders present deemed a quorum.
- Voluntary adjournment can be done by motion; further notice is required only if adjourned “until further notice.”
- Maximum adjournment period: 120 business days from record date or 60 business days from adjournment unless MOI provides otherwise.

Proxies

What is a Proxy?

A proxy is both:

- The person appointed to attend, participate, speak, and vote at a shareholders’ meeting on behalf of a shareholder; and

- The instrument (written document) by which that appointment is made.

A shareholder has a right (not an obligation) to appoint a proxy to act on their behalf at a shareholders' meeting or to provide written consent to a resolution (under section 60 of the Act).

Key point: *A proxy appointment does not count as a vote until it is exercised at the meeting.*

Who Can Be a Proxy?

- Any individual may be appointed as a proxy – they need not be a shareholder, unless otherwise defined in the MOI or By-Laws of the Company.
- A shareholder may appoint multiple proxies, even concurrently, to act for different shares or securities.
- A proxy may delegate their authority to another person (unless restricted in the proxy form).
- Limitations on how many shareholders one person may represent (e.g., “no more than five proxies”) are invalid as such restrictions contravene section 58(1), which is an unalterable provision.

How to Appoint a Proxy

- Must be in writing, dated, and signed by the shareholder.
- A copy must be delivered to the company (physically or electronically) before the proxy exercises any rights at the meeting.
- There is no statutory cut-off time for submission. The proxy may be delivered “at any time” before voting.

Any clause in the Memorandum of Incorporation (MOI) imposing a 48-hour deadline (for example) for proxy lodgement is void.

Practically, proxies can be emailed or hand-delivered shortly before or at the meeting – as long as they are received before the vote is exercised.

Verification and Tabling

Before a proxy participates:

- The chairperson must verify the proxy's identity (per section 63(1)(b)).
- The proxy form must be tabled or noted at the meeting and recorded in the minutes as part of the attendance record.
- The chairperson determines the validity of proxy forms unless the MOI provides otherwise.
- If errors are minor or not material (e.g., a missing date), the proxy form can still be valid.

Can a Proxy Count Toward a Quorum?

Yes.

- Section 63(1) of the Companies Act includes proxies within those who may “attend, participate in, and vote” at meetings.
- Thus, proxies are counted for quorum purposes, since they represent shareholders’ voting rights.

Example:

If a company’s MOI requires a quorum of shareholders holding 25% of voting rights, and proxies represent those rights, the quorum requirement is met.

Validity Period and Revocation

- A proxy appointment is valid for one year from the date of signing unless a different period is stated.
- A shareholder may revoke or replace a proxy by:
 - Sending a written cancellation; or
 - Appointing a new proxy.
- If the shareholder personally attends and votes at the meeting, the proxy is automatically suspended for that meeting.

Voting by Proxies

- Unless restricted by the MOI or proxy form, a proxy may vote as they see fit (section 58(7)).
- Proxies may vote on a show of hands and on a poll.
- Proxy forms can specify voting instructions (for, against, or abstain).
- If a proxy votes contrary to instructions, the vote still counts, but the shareholder may have a contractual claim for breach of mandate against the proxy.

Notices to Proxies

Notices of meetings must still be sent to the shareholder, not the proxy, unless the shareholder has specifically directed the company (in writing) to send notices to the proxy and paid any applicable fee.

Company-Invited Proxies

Companies may invite shareholders to appoint a proxy from a list provided by the company, but must:

- Send the invitation to all shareholders entitled to notice;
- Include a prominent summary of shareholder rights under section 58(8); and
- Provide blank spaces so shareholders can insert their own chosen proxy and indicate voting instructions.

A company may not make proxy appointments irrevocable or restrict who shareholders may choose.

Directors' (Board) Meetings

Purpose

- Directors exercise powers by passing resolutions at properly convened meetings with quorum and correct voting.
- Improperly convened meetings or resolutions can be null and void.

Calling a Board Meeting

- Any director authorised by the board may call a meeting.
- Minimum requirements: 25% of directors (for boards with 12+ directors) or at least 2 directors (for boards with fewer than 12).
- Single directors cannot call a meeting; if only one director exists, board meeting rules generally do not apply.

Notice of Meeting

Notice is mandatory and must include date, time, location, and purpose of the meeting. Meetings may proceed without formal notice if all directors acknowledge receipt, are present, or waive notice.

Quorum

Default: majority of directors unless MOI specifies otherwise.
Must consist of directors capable of voting and disinterested in the matter.
Meetings without quorum are irregular and cannot transact business.

Voting

- Each director has one vote unless MOI provides otherwise.
- Majority of votes cast is required to pass a resolution.
- Depending on the contents of the MOI, a Chairperson may cast a deciding vote if tied and they did not vote initially.
- Voting agreements that restrict directors' discretion are prohibited.
- Minority directors must receive relevant information and sufficient time to consider matters.

Minutes and Resolutions

- Minutes must record all resolutions and declarations of interest.
- Resolutions must be dated, sequentially numbered, and accurately reflect decisions.
- Minutes and resolutions must be kept for seven years and accessible in South Africa.
- Shareholder inspection is generally not allowed unless MOI permits.

Electronic Board Meetings

- Physical presence is not required.
- Meetings may be held electronically if all participants can communicate effectively.
- MOI may restrict electronic meetings if desired.

Decisions Without a Meeting (Round-Robin Resolutions)

- Directors may approve decisions in writing without a formal meeting.
- All directors must receive notice; approval usually requires a majority unless MOI requires otherwise.
- Reduces discussion opportunities for minority directors but allows efficient decision-making.

Practical Takeaways

1. Ensure notice complies with timing, content, and method requirements.
2. Verify quorum before and during meetings.
3. Document any ratifications if notice defects exist.
4. Confirm proper electronic participation and proxy use.
5. Ensure voting records and board resolutions accurately reflect participation and declarations of interest.
6. Check MOI for variations on notice, quorum, adjournment, or voting rules.

Close Corporations (CCs)

Subject to the provisions of the Association Agreement, voting rights, notice, quorum, and resolutions for CCs (generally speaking) remain governed by the CC Act.

TOPIC	PROVISION	KEY POINTS
Voting Rights	S46(d)	Votes are proportional to members' interests; decisions by majority unless higher threshold required.
Notice of Meetings	S48(2)(a)	Notice must specify date, time, and venue ; must be given in advance to allow attendance.
Quorum	S48(2)(b)	Meeting requires quorum, usually majority of members representing majority of interests, or as per rules/founding statement.
Voting at Meetings	S48(2)(c)	Voting usually by show of hands; each vote proportional to interest; resolutions by majority of votes cast unless higher threshold specified.

14 BENEFICIAL OWNERSHIP

Beneficial Owner

A beneficial owner is an individual who:

- Holds 5% or more of the company's issued shares or voting rights.
- Exerts significant influence over the company's management or decisions.
- Has the ability to appoint or remove directors.
- Controls the company through a chain of ownership or control.
- Any arrangement giving material influence over management.

This aligns with international standards set by the Financial Action Task Force (FATF) to enhance transparency and combat financial crimes. This concept is central to the Act, as amended by the General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Act 22 of 2022.

Filing Requirements

State-owned companies must file unless exempted by the Minister.

Affected companies, including public companies, state-owned companies, and certain private companies, are required to:

- Maintain a Beneficial Ownership Register.
- File this register with the CIPC annually, within 30 days of their anniversary date.
- Update the register within 10 days of any changes to beneficial ownership.

Failure to comply with these requirements can result in penalties, including the inability to file annual returns and potential deregistration of the company.

However, listed companies (and their subsidiaries / controlled entities) do not need to file if this information is already kept by the stock exchange / another authorised institution.

Practical Points

- Always trace ownership to natural persons (look through holding companies, trusts, agreements).
- Apply 5% threshold for filing purposes, even though the law itself does not set this percentage for beneficial ownership.
- Maintain registers:
 - Affected companies = beneficial interest register (5%+).
 - Non-affected companies = beneficial ownership register.
- Keep filings up to date (within 10 business days of any change).

15 ANNUAL RETURNS

Filing Obligations

- All companies must file an annual return with the CIPC within 30 business days of their incorporation anniversary.
- Forms:
 - CoR30.1 – Local companies
 - CoR30.3 – External companies
 - CoR30.2 – Financial Accountability Supplement (for companies not audited).

Financial Statements

- Audited companies: Must submit latest audited AFS.
- Non-audited companies: Submit independently reviewed AFS or FAS aka complete CoR30.2.
- Note: Incorporation date ≠ year-end.
- Annual return must include the name of the person responsible for compliance with Chapter 2 Part C and Chapter 3 of the Act.

16 RE-INSTATEMENT

Context and Implications of (“Forced”) Deregistration

The CIPC has been intensifying efforts to deregister companies and CCs for non-compliance with the Act, particularly concerning Annual Returns, Beneficial Ownership declarations, and other statutory obligations. This action is driven by persistently low compliance rates and the prevalence of dormant entities, which pose risks related to money laundering and other illicit activities.

Consequences of Deregistration

Once deregistered, a company or CC ceases to legally exist, resulting in frozen bank accounts, halted services, and potential personal liability for directors.

Required Documents:

- Certified copy of applicant’s ID.
- Certified IDs of all directors.
- Completed Form COR40.5 (Application for Reinstatement).
- Mandate authorising reinstatement.
- Proof of business activity or assets (bank statements, deeds, etc.).

Reinstatement Process

Reinstatement is possible but requires proof of economic activity at the time of deregistration and settlement of all outstanding obligations.

To reinstate a deregistered entity, directors must submit a reinstatement application along with evidence of economic activity and payment of all outstanding fees. The process is detailed under the current practice note issued by the CIPC.

17 DEREGISTRATION

Voluntary deregistration of a company in South Africa is a formal process initiated by the company's shareholders or directors to close the business legally. This procedure is governed by Section 82(3)(b)(ii).

Eligibility Criteria

A company may apply for voluntary deregistration if:

- It has ceased to carry on business;
- It has no assets; or
- Due to the inadequacy of its assets, there is no reasonable probability of the company being liquidated.

Additionally, the company must be in good standing with the CIPC, with all annual returns and tax obligations up to date.

Required Documentation

To apply for voluntary deregistration, the following documents must be submitted to the CIPC:

- A written request on the company's letterhead, signed by at least 50% of the active directors or members;
- A tax clearance certificate (PIN) or written confirmation from the South African Revenue Service (SARS) that no tax liability is outstanding;
- Certified copies of the directors' or members' identification documents; and
- Supporting evidence that the company is not carrying on business and has no assets or liabilities.

Post-Deregistration Obligations

After the company is deregistered, it is essential to:

- Ensure that all final tax returns are submitted; and
- Deregister the company for all tax types with SARS.

Failure to complete these steps may result in penalties.

18 B-BBEE AFFIDAVITS

The Broad-Based Black Economic Empowerment Act 53 of 2003 as amended (Generic Codes of Good Practice).

EME – Exempted Micro Enterprise:

- Annual turnover ≤ R10 million
- Verification: Can provide a sworn affidavit instead of a full B-BBEE certificate.

QSE – Qualifying Small Enterprise:

- Annual turnover R10 million – R50 million.
- Must undergo a B-BBEE verification process.
- Can either:
 - Be verified using the scorecard approach, or
 - If >50% black-owned, use a sworn affidavit for black ownership element.

GSE – Generic/Larger Enterprises:

- Annual turnover > R50 million.
- Must undergo full B-BBEE verification via a verification agency.
- Sworn affidavits cannot replace verification for GSEs.

Role of Sworn Affidavits

For EMEs and certain QSEs, B-BBEE compliance can be demonstrated using sworn affidavits instead of costly verification processes.

Key Points

- Sworn affidavits are used to attest ownership levels, management control, or black ownership.
- Must be signed in the presence of a Commissioner of Oaths.
- Provides a legally binding declaration under oath.
- Typical content includes:
 - Company registration details
 - Annual turnover confirmation
 - Black ownership percentage
 - Statement that information is true under oath

Accountants as Commissioners of Oaths

An accountant may act as a Commissioner of Oaths, provided they are legally appointed.

The Justices of the Peace and Commissioners of Oaths Act 16 of 1963 (the “Commissioners of Oaths Act”) governs who may act as a Commissioner of Oaths. The relevant provision is section 6 of the Commissioners of Oaths Act, which empowers the Minister of Justice to appoint commissioners of oaths and to designate categories of persons who may automatically hold that capacity.

For accountants specifically, the applicable authority is found in the Government Gazette notices issued under the Commissioners of Oaths Act (members of the Institute of Accounting and Commerce (IAC) for example).

Responsibilities when attesting a B-BBEE affidavit:

1. Verify the identity of the signatory.
2. Ensure the signatory understands the content and is signing voluntarily.
3. Witness the signature and stamp the affidavit with the Commissioner of Oaths seal.
4. Keep the affidavit in proper form, complying with *Government Gazette* requirements.



Note:

- *The accountant does not verify the B-BBEE status, only attests that the declaration is sworn under oath.*
- *Misrepresentation in the affidavit can expose the company to legal consequences, including fines and criminal liability.*

19 CLOSE CORPORATIONS

PRIVATE COMPANY	CLOSE CORPORATION
1. Juristic person	1. Juristic person
2. Corporate veil can be lifted in certain circumstances in terms of the common law and in terms of section 20 of the Companies Act	2. Corporate veil can be lifted in certain circumstances in terms of the common law and in terms of section 65 of the Close Corporations Act
3. Perpetual succession	3. Perpetual succession
4. Directors	4. Members
5. Shareholders	5. Members
6. Shares	6. Interest expressed as a percentage
7. From 1 May 2011 (commencement of the 2008 Companies Act), there is no longer a maximum of 50 shareholders. There is now no limit on the number of shareholders of a private company	7. Maximum of 10 members
8. Shareholders do not have a fiduciary duty to the company	8. Members do have a fiduciary duty to the corporation and they are also liable to the corporation if they are negligent
9. Companies and trusts can be shareholders	9. Companies and other juristic persons cannot be members. A trustee of a trust (whether it be a testamentary or inter vivos trust) can be a member under certain circumstances
10. Register of shareholders must be kept by the company	10. No register of members, details are in founding statement
11. Shareholders have virtually no risk of liability for company's debts	11. Members have relatively high risk of liability for corporation's debts and can be jointly liable for the debts of the corporation in several circumstances
12. Directors can be personally liable for debts of the company if they are reckless or fraudulent	12. Members can be personally liable for debts of the corporation if they are reckless or fraudulent, and must in some circumstances repay amounts received
13. Memorandum of Incorporation and Rules may be made by directors	13. Founding statement
14. There are unalterable, alterable and default provisions. The MOI can alter certain default positions	14. Association Agreement is optional, and in the absence of a provision in an association agreement there are certain default provisions
15. Liquidity and solvency test must be applied in certain situations. No maintenance of capital rules	15. Liquidity and solvency test must be applied in certain situations. No maintenance of capital rules

PRIVATE COMPANY	CLOSE CORPORATION
16. Shares can be repurchased by the company	16. Members' interest can be acquired by the corporation
17. Share capital	17. Members' contributions

Membership Basics

- Minimum members: 1
- Maximum members: 10
- Who can be members:
 - Natural persons.
 - Trustees of qualifying trusts (with restrictions – no juristic beneficiaries, limits on number of beneficiaries).
 - Legal representatives of insolvent, deceased, or incapacitated members.

The certificate will include information about the member and the CC, such as:

- The full name of the new or existing member.
- The percentage of ownership the member has in the CC.
- The name and registration number of the CC.
- The date and location where the transfer of interest took place.

Members' Interest

- Expressed as a percentage (%) of the CC – no joint ownership allowed.
- Represented by a certificate issued to the member.
- Not necessarily linked to contributions – can be changed by agreement.
- Contribution (money, property, or services) becomes the CC's property.

Acquiring an Interest

- Founding member: Acquires interest by initial contribution.
- New member:
 - Buys from existing member/estate, OR
 - Makes contribution (money or property) – interest % agreed with other members.

Disposing of an Interest

- Consent of all members needed unless Association Agreement provides otherwise.
- Insolvent member: Trustee may sell, but CC/members have first right of refusal (28 days).
- Deceased member: Executor can transfer to heirs/legatees only with consent of all members (otherwise must sell).
- CC purchase: Allowed if:
 - All members (except seller) consent in writing, and
 - Solvency and liquidity test is met.
 - Interest must be redistributed to other members immediately (CC cannot hold its own interest).
- CC must always have at least one member.

Loans to Members

- Financial assistance (aka loans to members): CC may assist, but only if:
 - All members consent in writing, and
 - Solvency and liquidity test is met.

Internal Relations

Fiduciary Duties

Members must:

- Act honestly and in good faith in CC's best interest.
- Avoid conflicts of interest.
- Do not compete with the CC.
- Disclose any material interest in CC contracts.

Liability: Members are personally liable for loss caused by breach of fiduciary duties or negligence. This liability may be waived if all members approve conduct in writing with full knowledge.

Association Agreement

- Optional but recommended (kept at registered office).
- Regulates internal relations, acquisition/disposal of interests, profit-sharing, decision-making, etc.
- Binding on all current and future members.

If no agreement:

- All members can manage the business.
- Equal rights unless 75% written consent for key changes (business, assets, immovable property).
- Majority vote decides disputes.
- Voting linked to percentage interest.
- Members indemnified for proper expenses.
- Payments to members must comply with solvency and liquidity test and be proportional to interests.

Disqualified Persons (Management)

Members disqualified from management include:

- Unrehabilitated insolvents (unless court permits).
- Persons disqualified as directors under the Act (e.g., delinquent directors, convicted for dishonesty, removed from office of trust).
- Minors (under 18).

Exceptions: A disqualified person may still manage if:

- They (and/or relatives) hold 100% of the members' interests; and
- All members consent in writing.

20 DUTIES OF ACCOUNTANTS

Companies

The distinction between an auditor and an accountant lies in their roles and responsibilities. An auditor provides an independent examination of a company's financial statements to ensure accuracy and compliance with accounting standards, whereas an accountant handles the preparation and maintenance of financial records.

The need for an auditor is typically determined by the company's size, PIS, and legal requirements. In summary, while all companies must maintain accurate financial records, the obligation to appoint an auditor is specifically mandated for public and state-owned companies.

Who Must Appoint an Auditor?

- Public and state-owned companies (at incorporation and every AGM).
- Other companies: Only if required by law/regulations or voluntarily via MOI or resolution.

Qualifications and Independence

- Must be a registered auditor.
- Must not be disqualified under section 69(8).
- Must not have been director, prescribed officer, employee, bookkeeper, or secretary of the company in the last 5 years.

Process

- If no auditor at incorporation → board appoints within 40 business days.
- Retiring auditors at AGM may be reappointed automatically, unless: rotation, objection, or disqualification applies.

Accounting Officers in Close Corporations

Appointment

- Every CC must appoint an accounting officer.
- First appointment takes effect on registration.
- Vacancies must be filled within 28 days.
- CCs may require both an accounting officer and an auditor (depending on the Act).

- Same person can act as both if allowed by law and professional codes.

Removal and Resignation

- Removal must be in writing.
- On resignation/removal, the officer must notify:
 - All members;
 - The CC's registered office; and
 - The Registrar (by registered post).
- Notice must include resignation/removal date, last day of duties, and whether aware of contraventions of the Act (details must be reported if so).
- If the post is vacant for 6 months, members aware of the vacancy are personally liable for CC debts.

Qualifications

- Only members of recognised professional bodies (published in the *Government Gazette*) may act as accounting officers.
- Can be appointed as:
 - An individual;
 - A qualified firm;
 - A personal liability company (all directors qualified); or
 - A close corporation (all members qualified).
- Where the officer is also a member/employee of the CC, all other members must consent in writing.
- Independence and objectivity must be preserved.
- Appointment letters must be on correct letterhead and no older than 3 months.
- Remuneration is by agreement with members.

Duties

- Access rights: entitled to accounting records and explanations.
- Core duties:
 - Confirm AFS agree with records.
 - Review appropriateness of accounting policies.
 - Report to members on above.
- Must report all contraventions or uncertainties regarding the Act in their report.
- Must disclose if they are also a CC member/employee.
- Must immediately report to Registrar if:
 - CC is not operating;
 - Founding statement not updated;

- Liabilities exceed assets; or
- AFS incorrectly show assets > liabilities.
- Ensure vacancies don't extend beyond 6 months (members may be personally liable).
- Be cautious when acting as both member/employee and accounting officer – independence risk.

21 LIABILITY OF ACCOUNTANTS

Key Points – Sources of Exposure

General Legal Liability

KEY PRINCIPLES	
Duty of Care	Professionals, including accountants and auditors, owe a duty of care to clients. This is recognized, but the duty is limited to what is reasonable within professional standards. Auditors must comply with generally accepted standards; mistakes within these standards are not negligent.
Negligence	Must show failure to exercise the skill, care, and diligence expected of a reasonably competent professional in that field.
Wrongfulness	Liability requires establishing a legal duty not to act negligently. Especially in cases of pure economic loss, wrongfulness depends on public or legal policy.
Causation	Must show a direct link between professional negligence and the financial loss suffered. Damages must have been foreseeable and within the contemplation of the parties. A recent case stressed that negligence alone is insufficient; plaintiff must prove the loss would not have occurred if professional duties had been properly performed.
Contractual Protection	Where the plaintiff could have protected themselves contractually, courts are reluctant to extend delictual claims.
Proof of Loss	Plaintiff must prove actual financial loss and, if relevant, likelihood of success in underlying claims. Multiple contributing factors weaken causation.
Limitation of Liability	The Auditing Professions Act limits auditor liability: negligence, fraud, or malintent must be shown. Courts are cautious in awarding damages for alleged professional negligence causing economic loss.
Practical Implication	Courts are generally sceptical of claims for economic loss against accountants/auditors unless clear deviation from professional standards is established. Mere errors or omissions within professional judgment typically do not attract liability.

Fines, Costs, and Disciplinary Sanctions

Financial risk (fines, cost orders) is now high. Professional indemnity (PI) insurance may not cover everything (e.g., fines often not indemnifiable) (see camargueum.co.za).

Recommended Actions / Mitigants

- Be diligent about fraud risk assessment.
- Procure and maintain professional indemnity (“PI”) insurance.
- Ensure sufficient documentation and audit evidence.
- Clarify scope of work and responsibilities in contracts.
- Be cautious about third-party reliance if not contracted.
- Cooperate in investigations but get legal advice early.

22 ENGAGEMENT LETTER

Parties

- **Issued to:** Members of CC / Directors of Company
- **Firm:** ABC Accountant
- **Client:** XYZ CC / XYZ Company (“client”, “you” or “taxpayer”)

Confidentiality and Data Protection

- Firm must treat all information as confidential.
- Exceptions: public domain, lawfully obtained from other sources, or required by law.
- Must comply with POPIA by inter alia:
 - Process personal info only for engagement purposes.
 - Disclose only to authorised staff/sub-contractors under confidentiality.
 - Take technical and organisational measures to safeguard info.
 - Notify client of breaches; destroy/update personal info when no longer needed.

Scope of Services

Taxation Services

- Prepare and submit:
 - Income tax (IT14)
 - Provisional tax (IRP6)
 - VAT returns (VAT201)
 - PAYE (EMP201)
 - EMP501 reconciliation
- Assist with SARS queries, objections, and audit support.
- Client responsible for accuracy and signing of documents.

Compilation and Agreed-Upon Procedures

- Specific engagements must be separately agreed (e.g., ISRS 4410 / ISRS 4400).
- Scope limited to agreed procedures; no assurance beyond that.

ASPECT	CC ACCOUNTING OFFICER	COMPANY INDEPENDENT REVIEWER / AUDITOR
Governing	Close Corporations Act 69 of 1984	Companies Act 71 of 2008 & Regulations
Primary Duty	Report to members, verify financial statements match accounting records	Express conclusion on financial statements (limited assurance)
Scope	Compliance, financial review, members' reporting	Independent review, reportable irregularities, directors' report evaluation
Assurance	No assurance on correctness; duty to act if statutory breaches found	Limited assurance; not an audit; will report reportable irregularities
Regulatory Reporting	Act on contraventions of CC Act	Reportable irregularities to CIPC under Reg 29
Financial Statements	Must ensure statements reflect accounting records Optional: bookkeeping, payroll, budgets, management accounts	Review statements, identify material inconsistencies, evaluate directors' report Optional: compilation, agreed-upon procedures, advisory services

Universal Management Responsibilities

- Ensure accurate, complete, and timely information.
- Sign and review tax returns.
- Maintain proper records and safeguard assets.

Liability and Indemnity

- Maximum liability: fees charged (except for proven gross negligence/wilful misconduct).
- Client indemnifies firm for losses arising from engagement.
- Firm may take legal action for unpaid fees against directors/members personally.

Fees and Payment

- Based on time, skill, responsibility, and expenses.
- Monthly billing common.
- Interest on overdue payments >30 days.
- Practitioners have the right to suspend services for non-payment, but note that it is illegal to withhold Efiling profiles per SARS criteria for Tax Bodies.

Engagement Team

- Engagement led by the principal accountant, supported by assistants.
- Substitution permitted with suitably qualified staff.

Term and Renewal

- Engagement letter governs all work under this engagement.
- Annual or long-life services: issue annually or at least every 3 years.
- Governed by South African law.

23 APPENDICES

1. Glossary

- **“Board”** means the Board of Directors of the Company including any Committee of the Board duly appointed by it.
- **“CIPC”** means the Companies and Intellectual Property Commission, a South African government agency that forms part of the Department of Trade, Industry and Competition (the dtic), responsible for the registration of companies, co-operatives, and intellectual property rights (trademarks, patents, designs, and copyright) and maintenance thereof.
- **“Companies Act”** or the **“Act”** means the Companies Act, No. 71 of 2008 (as amended from time to time).
- **“CC Act”** means the Close Corporations Act, no 69 of 1984 (as amended);
- **“Director”** means either an Executive or Non-Executive Director and who is a Member of the Board as contemplated in Section 66 of the Act, or an alternate Director, and includes any person occupying the position of a Director or alternate Director, by whatever name designated.
- The doctrine of **“Constructive Notice”** means and states that, when dealing with a company, a third party is assumed to be aware of the company's publicly accessible constitutional documents, such as the Memorandum of Incorporation.
- **“King Report”** or **“King IV”** means guidelines for the governance structures and operation of companies in South Africa. The King Committee on Corporate Governance issues it. Three reports were issued in 1994 (King I), 2002 (King II), and 2009 (King III) and a fourth revision (King IV) in 2016.
- **“Memorandum of Incorporation”** or **“MOI”** means the prevailing MOI of the Company as may be amended from time to time.
- **“Member”** means persons qualified to become members of a close corporation in terms of section 29 of the CC Act, and in relation to companies, means a shareholder being a person entered on the company's register of shareholders in terms of section 1 and section 57 of the Act.
- **“Old Act”** or **“1973 Act”** means the Companies Act, No. 61 of 1973.
- **“Quasi Partnership”** means a small private company that is formed on the basis of an agreement, an understanding, or an intention that the shareholders will generally all be directors and participate in the management of the company.
- **“RF”** means ringfenced.

2. Engagement Letter

Specimen

The contents are designed to assist the firm and not necessarily to be reproduced in a letter engagement.

[Firm Letterhead]

Date

Issued to: Members of the CC / Directors of the Company

[Address]

Dear Sirs/Madams

We are pleased to confirm the arrangements for ABC Accountant to provide services to XYZ Company / Close Corporation (hereinafter referred to as "client", "you" or "taxpayer") as set out in this engagement letter.

Confidentiality and Data Protection

ABC Accountant ("the Receiving Party") shall treat and hold as secret and confidential all information which it may receive from XYZ ("the Disclosing Party") or which comes known to it during the course of this engagement.

Please note that the foregoing obligations shall not apply to any information which:

- Is lawfully in the public domain at the time of disclosure to the Receiving Party;
 - Subsequently becomes lawfully part of the public domain by publication or otherwise;
 - Subsequently becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such confidential information to the Receiving Party; or
 - Is disclosed pursuant to a requirement or request by operation of law, obligation in terms of this engagement, regulation, or court order.
1. In performing its obligations under this engagement, ABC Accountant shall:
 - a. Comply with the provisions of the Protection of Personal Information Act 4 of 2013 as amended ("POPIA"), governing the collection, use and processing of Personal Information as defined in POPIA;
 - b. Not process Personal Information for any purpose other than to perform its obligations under this engagement and ensure that such processing will not place the XYZ in breach of any applicable privacy and data protection laws or stated requirements;

- c. Only act on the instructions of the XYZ in collecting, processing, and utilising the Personal Information (and for avoidance of doubt, this Letter of Engagement shall constitute such instructions);
- d. Not disclose or otherwise make available the Personal Information to any third party other than authorised staff or sub-contractors who require access to such Personal Information strictly in order for the ABC Accountant to carry out its obligations pursuant to this engagement, and ensure that such staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information;
- e. Take appropriate, reasonable technical and organisational measures to ensure that the integrity and confidentiality of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against accidental loss, destruction, damage, unlawful access, or processing;
- f. Immediately notify the XYZ in case of possible infringements of POPIA, the terms of this clause or other irregularities by the ABC Accountant, its staff or any other party acting on behalf of the ABC Accountant in relation to the XYZ Company's Personal Information; and
- g. At the XYZ's option, update, amend, return, or destroy the Personal Information once it is no longer required for the purposes of performing obligations under this engagement or any directly related purpose.

Scope of Assistance

Taxation Services

You have requested our assistance with the preparation and submission of the [company / close corporation]'s income tax returns to SARS, including applications for extensions, reviews of assessments, responses to SARS queries, correction of errors, and lodging objections where necessary.

The work to be performed will be based on our interpretation of the tax law at the relevant time. While laws may change through amendments or court decisions, we will keep you informed where possible.

We will compile and submit the following returns as they fall due:

- Annual income tax returns (IT14)
- Provisional tax returns (IRP6, twice yearly)
- Bi-monthly VAT returns (VAT201)
- Monthly PAYE returns (EMP201)
- Annual EMP501 reconciliation
- Audit and verification support as required

It remains your responsibility to provide us with accurate, complete information, and to sign all documents before submission. Our services commence from the date we took over; while we may assist with earlier submissions, we cannot accept responsibility for work done by previous advisors.

VAT Returns

We will prepare VAT returns from your accounting records for approval. To ensure timely submission and avoid penalties, we require the following each month:

- Bank statements for the previous month.
- Reports on captured invoices (sales and supplier).
- Access to source documents for spot checks.

You remain responsible for the completeness and accuracy of the VAT returns. Our services commence from the date we took over; while we may assist with earlier submissions, we cannot accept responsibility for work done by previous advisors.

Accounting Officer and Related Accounting Services

As accounting officer, we are required to perform certain duties imposed on us in terms of section 62 of the Close Corporations Act, No. 69 of 1984 ("CC Act").

Under the CC Act, we must verify that the annual financial statements match the close corporation's accounting records, summarized as required by section 58(2)(d), review the appropriateness of the applied accounting policies, and report to members. Written representations will be requested from members. We must also act if, during our duties as accounting officers, we become aware that:

- A provision of the CC Act has been contravened;
- A change to the particulars in the founding statement has not been registered with the CIPC;
- The annual financial statements indicate that the liabilities of the close corporation exceed its assets; or
- The annual financial statements incorrectly indicate that the assets exceed the liabilities.

In addition, we will perform the following services, which will be provided based on information supplied by you and for which you will be responsible as to completeness and accuracy:

- Assistance with the writing up of the books and records of the business on a regular basis.
- Preparation of annual financial statements for approval by you.
- Preparation of monthly management accounts.
- Prepare and monitor budgets.
- Cash flow forecast.
- Management consulting.
- Cost accounting.
- Payslips and payroll duties.

Reportable Irregularities in terms of Regulation 29 of the Companies Regulations

It is our responsibility to inform you regarding our obligation, in terms of Regulation 29 of the Companies Regulations, to report reportable irregularities to the CIPC.

A “reportable irregularity” refers to any act or omission committed by any person responsible for the management of a company, which:

- Unlawfully has caused or is likely to cause material financial loss to the company or to any member, shareholder, creditor or investor of the company in respect of his, her or its dealings with that entity;
- Is fraudulent or amounts to theft; or
- Causes or has caused the company to trade under insolvent circumstances.

We are not required to design procedures for the specific purpose of identifying reportable irregularities. However, we will consider all information that comes to our attention from any source to determine whether a reporting obligation arises. In instances where we are satisfied or have reason to believe that a reportable irregularity has taken place or is taking place, the independent reviewer is required, without delay, to send a written report to the CIPC. Such a report initiates a series of activities in accordance with Regulation 29 of the Companies Regulations pertaining to discussing the report with the members of the Board of the company, obtaining representations from the Board, and sending a final report to the CIPC concluding on the existence and status of a reportable irregularity, including information relating to steps that have been taken for the prevention or recovery of any loss as a result thereof (if relevant).

The partners and employees of our firm have a professional obligation to act in the public interest, and to act in order to:

- i. Enable [insert name of client] (the company) to rectify, remediate, or mitigate the consequences of any identified or suspected non-compliance with laws or regulations as described in the Code; or
- ii. Inform the CIPC of the non-compliance or suspected non-compliance with laws or regulations where it has not yet occurred.

“Non-compliance with laws and regulations (non-compliance) in relation to Professional accountants in Public Practice comprises acts of omission or CIPC, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by a client, or by those charged with governance of a client, by management of a client or by other individuals working for or under the direction of a client.”

Where we encounter non-compliance or suspected non-compliance we will seek to obtain an understanding of the matter. Where appropriate, we will discuss the matter with the appropriate level of management at the company, or those charged with governance in order that such people can take appropriate action to rectify, remediate, or mitigate the consequences of the non-compliance, deter the CIPC of non-compliance where it has not yet occurred, or disclose the matter

to an appropriate authority where required by law or regulation or where considered necessary in the public interest, having regard to the appropriateness of the response of management and, where applicable, those charged with governance and other relevant factors in accordance with the Code.

We, in encountering non-compliance or suspected non-compliance, are also obliged to comply with applicable legislation or professional standards, which may require us to disclose the matter to an appropriate authority, including the reporting of reportable irregularities as referred to in the preceding section of this engagement letter.

Compilation of Financial Statements

(If any such work is required, specific agreement should be reached with the director of the company / members of the close corporation. Appropriate subject matter should be incorporated in the engagement letter from the statement of International Standard on Related Services (ISRS) 4410 (Revised) *Compilation Engagements* and other consequential amendments made to this letter.)

Agreed-upon procedures

(If any such work is required, specific agreement should be reached with the directors of the company / members of the close corporation. Appropriate subject matter should be incorporated in the engagement letter from the International Standards on Related Services (ISRS) 4400 *Engagements to Perform Agreed-upon Procedures Regarding Financial Information* and other consequential amendments made to this letter.)

Other services

We will also provide other services on a limited basis such as:

- Bookkeeping.
- Employment Equity reports.
- Annual Workmen's Comp returns.
- Department of Labour registrations.
- Internal control implementations.

You will be required to pay all dues to the statutory bodies such as SARS, CIPC, Department of Labour, etc., directly.

The Act does not require an audit or review to be carried out and no audit or review will be conducted. Accordingly, we will not imply or express an opinion or any other form of assurance on the annual financial statements in our report. In addition, our work should not be expected to disclose fraud, errors, or other irregularities. Should you, at any time, require a specific investigation for this purpose, this will be undertaken separately at your request.

The Objective and Scope of the Independent Review

You have requested that we perform an independent review of the financial statements of [insert name of client], which comprise the statement of financial position as at [insert period- end date], and the statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows for the [year/period] then ended, and the notes to the financial statements including a summary of significant accounting policies. We are pleased to confirm our acceptance and our understanding of this independent review engagement by means of this letter.

Our independent review will be conducted with the objective of expressing our conclusion on the financial statements. Our conclusion, if unmodified, will be in the form “Based on our review, nothing has come to our attention that causes us to believe that these financial statements [do not present fairly, in all material respects, the financial position of the company as at [insert period-end date] and its financial performance and cash flows for the [year/period] then ended] / [of [insert name of client] are not prepared, in all material respects] in accordance with [insert name of the applicable financial reporting framework / the basis of accounting described in note x to the financial statements] and the requirements of the Companies Act.”

The Independent Reviewer’s Responsibilities

We will conduct our independent review in accordance with the International Standard on Review Engagements (ISRE) 2400 (Revised), *Engagements to Review Historical Financial Statements*. ISRE 2400 (Revised) requires us to conclude whether anything has come to our attention that causes us to believe that the financial statements, taken as a whole, are not prepared in all material respects in accordance with [insert name of the applicable financial reporting framework / the stated basis of accounting]. ISRE 2400 (Revised) also requires us to comply with relevant ethical requirements.

A review of financial statements in accordance with ISRE 2400 (Revised) is a limited assurance engagement. We will perform procedures, primarily consisting of making inquiries of management and others within the entity, as appropriate, and applying analytical procedures, and evaluate the evidence obtained. We will also perform additional procedures if we become aware of matters that cause us to believe the financial statements as a whole may be materially misstated. These procedures are performed to enable us to express our conclusion on the financial statements in accordance with ISRE 2400 (Revised). The procedures selected will depend on what we consider necessary, applying our professional judgment, based on our understanding of [insert name of client] and its environment, and our understanding of [insert name of the applicable financial reporting framework / the stated basis of accounting] and [its/their] application in the industry context.

An independent review is not an audit of the financial statements, therefore:

- a) There is a commensurate higher risk than there would be in an audit, that any material misstatements that exist in the financial statements reviewed may not be revealed by the independent review, even though such a review is properly performed in accordance with ISRE 2400 (Revised).
- b) In expressing our conclusion from the independent review of the financial statements, our report on the financial statements will expressly disclaim any audit opinion on the financial statements.

Responsibilities of the Directors

The directors are responsible for the calculation of the public interest score in accordance with Regulation 26 of the Companies Regulations, 2011 (Companies Regulations). The company's public interest score should be calculated by the directors at year-end for the current financial year. It is the sole responsibility of the directors to determine the appropriateness of an independent review engagement in the circumstances of the company, in compliance with the requirements of the Companies Act 71 of 2008 as amended (Companies Act), and taking cognisance of any other requirements or agreements that may be applicable to the company.

Our independent review will be conducted on the basis that you acknowledge and understand your responsibility:

- a) For the preparation [and fair presentation] of the financial statements in accordance with [insert the name of the applicable financial reporting framework / the stated basis of accounting] and the requirements of the Companies Act;
- b) For such internal control as you determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error; and
- c) To provide us with:
 - i. Access to all information of which you are aware that is relevant to the preparation [and fair presentation] of the financial statements, such as records, documentation and other matters;
 - ii. Additional information that we may request from you for the purpose of the review; and
 - iii. Unrestricted access to persons within the entity from whom we determine it necessary to obtain evidence.

As part of our independent review, we will request from you written confirmation concerning representations made to us in connection with the independent review.

Reporting

As stated above, our independent review will be conducted with the objective of expressing a conclusion on the financial statements as a whole. Our conclusion will be communicated in a written report. If the conclusion on the financial statements of the company is unmodified, it is expected to be read as follows:

“Based on our review, nothing has come to our attention that causes us to believe that these financial statements [do not present fairly, in all material respects, the financial position of [insert name of client] as at [insert period-end date], and its financial performance and its cash flows for the year/period then ended] / [of [insert name of client] are not prepared in all material respects], in accordance with [insert the name of the applicable financial reporting framework / the basis of accounting described in note x to the financial statements] and the requirements of the Companies Act of South Africa.”

The form and contents of our report may need to be amended in the light of our findings obtained from the independent review.

Other Reports Required by the Companies Act

The Companies Act requires the annual financial statements to include a directors’ report. A complete set of financial statements is identified by the applicable financial reporting framework and does not include the directors’ report.

The information contained in the directors’ report is generally not in the form of an assertion and the subject matter is generally not identifiable and open to consistent evaluation or measurement against identified criteria. Consequently, our conclusion expressed on the financial statements does not extend to the information contained in the directors’ report.

However, an independent reviewer has a responsibility to read the other information contained in the directors’ report to identify material inconsistencies, if any, with the reviewed financial statements.

As part of our independent review of the financial statements for the [year/period] ended [insert period-end date], we will read the directors’ report and in doing so, consider whether the directors’ report is materially inconsistent with the reviewed financial statements, or our knowledge obtained in the independent review, or otherwise appears to be materially misstated. We will include a separate paragraph in our independent review report in this regard.

Responsibility of Management

Management is responsible for the proper recording of transactions in the books of account, for safeguarding of assets, and for the substantial accuracy of the financial records. It is your responsibility to provide us with complete, reliable, accurate, and timeous information in respect of your tax affairs in order for us to provide the required services. Management also has final responsibility for the income tax return(s), and therefore you or your Public Officer should review the return(s) carefully for any omissions, misstatements or inaccuracies before signing and before the submission of the tax return(s).

Please note that the responsibility for signing any and/or all tax return(s) rests with the Public Officer.

Our work in connection with the preparation of the tax return does not include any procedures designed to discover defalcations, omissions, or other irregularities in the financial information, should any exist. Our services are based on the information supplied by you.

Liability

Notwithstanding that this is an engagement with XYZ, we reserve the right, at any time, to institute action or legal proceedings for unpaid fees, solely against any or all of the directors/members of XYZ in their personal capacity, and/or we reserve the right to join any or all of the shareholders/members as defendants/respondents, in any action or proceedings instituted against XYZ, should we elect to do so.

The XYZ hereby indemnifies and holds the ABC Accountant and all its agents and representatives harmless against any loss, claims, demands, proceedings, damages, and expenses of whatsoever nature in respect of loss of or damage to any property of any person or loss of profits or inability to operate arising during the duration of this engagement which the ABC Accountant may suffer arising out of the negligence or wilful conduct of the XYZ.

Notwithstanding the above, the maximum liability of ABC Accountants (only in the case of proven gross negligence or wilful misconduct), its employees and agents for all claims arising out of our services to you in terms of this engagement shall be limited to the fees charged for this engagement, and the maximum liability will apply to all claims from whatever source and however arising whether in contract, delict, or otherwise, and will include claims for consequential loss and claims of pure economic loss (if any).

Fees

Our fees, which may be billed monthly, are based on the degree of responsibility and skill involved and the time necessary to conduct the work, plus reimbursement of our expenses.

You shall pay our fees, without any right of set-off, on presentation of our invoice. We will be entitled to charge interest (at the prevailing prime overdraft rate), monthly, on all amounts

outstanding on our fees, for whatsoever reason, older than 30 (thirty) days from the date reflected on our invoice.

Current rates

Monthly Fee: R XXXX.XX

Without prejudice to any other rights that we may have in law, we reserve the right to suspend or terminate the performance of the services or any part thereof to you immediately, at any time, with or without notice, should payment of any of our fees be overdue.

Engagement Team

The engagement will be performed under the direction of ABC XXX Accountant with assistance from XXX Assisting Accountant. We will use reasonable endeavours to ensure that individuals identified in this engagement letter as being involved in the services are so involved. However, we may substitute others of equal or similar skills and experience for those identified.

Terms of Business

The terms of this letter and its appendices will apply to all work carried out by us in connection with this engagement, including any work done prior to the date of counter signature of this letter. This engagement letter does not include any service not specifically mentioned in this letter. However, we would be pleased to discuss with you any additional services that you may require.

The general conditions, as set out in the terms of business attached hereto, apply to all work undertaken by ABC Accountant for you pursuant to this engagement letter.

All references in or to this letter include the terms of business and any other appendices hereto, together with any other documents or other terms applicable to the services to which specific contractual reference is made in this engagement letter, all of which together form and are referred to as the "agreement" or the "engagement letter". Once the terms of the engagement set out in this letter have been agreed, they will remain effective until this letter is replaced and/or renewed by amendment or otherwise, in which case we will obtain your agreement thereon.

If any of the services covered in the engagement letter are considered to be annual (recurring) services and not long-life, then engagement letters covering these services should be issued on an annual basis. If the services covered in the engagement letter are long-life, then the engagement letter covering these services should be issued no less frequently than every three years.

Agreement of Terms

The terms of this engagement will be governed by South African law. This letter sets out the entire agreement and understanding between the company, you, and our firm and, once it has been agreed, this letter will remain effective until it is terminated, amended, or superseded. We shall be grateful if you will confirm your agreement and understanding of the terms of this letter by signing

and returning the enclosed copy. By signing this letter, you confirm that this letter and the contents therein have been brought to the attention of all directors of the company / members of the close corporation and that you have been duly authorised by them to sign this letter on their behalf.

If any additional services are to be rendered, or if the terms of our engagement are not in accordance with your understanding, please contact the engagement partner Mr. J Soap directly. We will then arrange an additional meeting to discuss the terms of our engagement in order to avoid misunderstandings or to discuss additional services that we may render for you. We look forward to full co-operation with your staff members, and we trust that they will make available to us whatever records, documentation, and other information are requested in connection with our engagement.

Yours faithfully

Mr J Soap (ABC Accountant)

Name: _____ Signature: _____

who warrants that he/she is duly authorised to sign for and on behalf of XYZ

Designation: _____

Date: _____

3. Close Corporations (“CCs”)

List of (minimum) Prescribed Forms

FORM	DESCRIPTION
CK1	Registration of Close Corporation
CK2	Registration of an amended founding statement
CK2A	Amendment regarding Accounting Officer and addresses
CK5	Court order for the alteration of founding statement
CK6	Voluntary Liquidation
CK7	Name Reservation
CoR9.1	Application of name/translated/shortened (only for existing close corporations)
CoR40.1	Notice of resolution to wind up solvent close corporation
CM26	Special resolution to wind up insolvent close corporation
CoR40.5	Application for re-instatement of deregistered close corporation
CoR123.1	Notice of Start of Business Rescue Proceedings
CoR123.2	Notice of appointment of Practitioner
CoR125.1	Notice concerning status of Business Rescue Proceeding
CoR125.2	Notice of Termination of Business Rescue Proceedings
CoR125.3	Notice of Substantial Implementation of a Business Rescue Plan

All close corporation forms can be accessed at: https://www.cipc.co.za/?page_id=3786

Checklist for an Association Agreement

Section 44 of the CC Act allows members to enter into a written association agreement to manage internal relations. It also outlines default provisions that apply if members do not specify arrangements and suggests that good practice may involve documenting additional agreements.

Where, therefore, there are two or more members, it is advisable for them to enter into an association agreement that provides for:

1. Participation of every member or selected members in the carrying on of the business (S46(a)).
2. Power of members to represent the close corporation in the carrying on of its business, with specific reference to (S46(b)):
 - a change in the principal business carried on
 - disposal of the whole, or substantially the whole, undertaking
 - disposal of all, or the greater portion of, the assets
 - an acquisition or disposal of immovable property.

3. Resolving the differences among members as to matters connected with the business (S46(c)).
4. Voting rights at meetings (S46(d)).
5. Notice of meetings as regards (S48(2)(a)):
 - dates
 - times
 - venues.
6. Quorum at meetings (S48(2)(b)).
7. Voting at meetings (S48(2)(c)).
8. Distribution to members (S46(f)).
9. The sale or transfer of a member's interest by a member (S33).
10. The sale or transfer of the interest of a deceased member (S35).
11. The sale or transfer of the interest of an insolvent member (subject to the provisions of S34).
12. Procedures to be followed in circumstances where a member becomes permanently incapable of performing his part in the carrying on of the business (S36(1)(a)).
13. The arrangements on the admission of a new member (S33).
14. Service conditions (salary, leave, etc.) of members.
15. Terms applicable to loans from members and obligations of members to fund the close corporation.
16. The basis for valuing a member's interest.
17. Indemnification for expenditure incurred on behalf of the close corporation (S48(2)(e)).
18. Capital commitments.
19. Working capital arrangements.
20. Matters relating to bank overdrafts.
21. The furnishing of securities by members.
22. Matters relating to insurance.
23. Arbitration clauses.
24. Requirements to have AFS audited.
25. Financial reporting requirements.

Specimen Letter of Representation

The contents are designed to assist the accounting officer and not necessarily to be reproduced in a letter of representation.

[Letterhead of close corporation]

Date

Accounting Officer

[Address]

Dear Sirs

In connection with your duties as accounting officer of CC for the year ended we confirm that, to the best of our knowledge and belief, the annual financial statements fairly present the situation, the results of operations and cash flows of CC in conformity with

[framework], which is appropriate to the business of the close corporation, and there has been no contravention of the Close Corporations Act, 1984. We acknowledge that the information in these annual financial statements is the responsibility of the members.

We confirm, to the best of our knowledge and belief, the following representations relating to your engagement:

1. The close corporation's financial statements have been appropriately prepared using [insert framework] on the going concern basis.
2. The close corporation's accounting policies and the methods followed in applying them are as disclosed in the annual financial statements and there have been no changes during the year in the close corporation's accounting policies except as described below.....
3. We have made available to you all accounting records and minutes.
4. We have advised you of all actions taken at meetings of members or managers (or other similar bodies as applicable) that may affect the annual financial statements.
5. We are not aware that there have been any violations of laws or regulations, the effects of which should be considered for disclosure in the annual financial statements or as a basis for recognising a contingent liability.
6. Except as disclosed in the annual financial statements, there are no:
 - Unasserted claims or assessments that our legal adviser had advised us are probable of assertion;
 - Material liabilities or contingent liabilities;
 - Material transactions or events that have not been properly recorded in the accounting records; or
 - Events that have occurred after the reporting date that would require adjustment to, or disclosure of, the annual financial statements.
7. The close corporation has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
8. The close corporation has satisfactory title to all owned assets and, except as disclosed in the annual financial statements, there are no liens or encumbrances on such assets or pledges of any assets.
9. The close corporation has complied with all aspects of contractual agreements that would have a material effect on the annual financial statements in the event of non-compliance.
10. The founding statement that has been made available to you is a copy of the (latest amended) founding statement, which has been lodged with the CIPC, and there have been no changes thereto which have not been registered.

Yours faithfully

(The letter is to be signed by, or on behalf of, all members.)

4. Companies

List of Prescribed Forms

FORM NUMBER	DESCRIPTION
CoR9.3	Notice Requiring Further Particulars (Name Reservation), issued by the Commission
CoR9.4	Confirmation Notice of Name Reservation
CoR9.5	Notice Refusing Name Reservation or Defensive Registration
CoR9.6	Notice of Potentially Contested Name
CoR9.7	Notice of Potentially Offensive Name
CoR11.1	Application to Transfer a Reserved or Defensively Registered Name
CoR11.2	Notice Refusing Name Transfer
CoR12.1	Notice Alleging Reservation System Abuse
CoR14.1	Notice of Incorporation – Annexures: A: Initial Directors of the Company; B: Alternative Names for the Company; C: Notice of Ring Fencing Provisions; D: Notice of Company Appointments
CoR14.2	Notice Rejecting a Notice of Incorporation
CoR14.3	Company Registration Certificate issued by CIPC
CoR15.2	Notice of Amendment of Memorandum of Incorporation – Annexure A: Notice of Ring Fencing Provisions
CoR15.3	Notice of Alteration of Memorandum of Incorporation
CoR15.4	Notice of Translation of Memorandum of Incorporation
CoR15.5	Notice of Consolidation of Memorandum of Incorporation
CoR15.6	Notice to Consolidate the Memorandum of Incorporation
CoR16.1	Notice Concerning Company Rules
CoR16.2	Notice of Results of Vote on Company Rules
CoR17.1	Application to Transfer Registration of Foreign Company
CoR17.2	Notice Requiring Further Particulars (Transfer registration of foreign company)
CoR17.3	Registration Certificate of Foreign Company transferring registration to the Republic
CoR17.4	Refusal to Transfer Registration of Foreign Company
CoR18.1	Application to Convert a Close Corporation
CoR18.2	Notice Requiring Further Particulars (for a close corporation conversion)
CoR18.3	Registration Certificate (conversion of close corporation to company)
CoR19.1	Notice to Show Cause Regarding Reckless Trading (or trading under insolvent circumstances)
CoR19.2	Confirmation Notice
CoR24	Request for Access to Company Information

FORM NUMBER	DESCRIPTION
CoR30.2	Financial Accountability Supplement
CoR30.3	Annual Return (External Company)
CoR31	Notice of Board Resolution to Convert Par Value Shares
CoR35.2	Notice of Action concerning Pre-Incorporation Contract
CoR36.1	Security Holder Notice to Company and Proxies
CoR36.2	General Company Notice to Security Holders
CoR36.3	General Company Notice to Holders of Beneficial Interest
CoR36.4	Notice of Director's Personal Financial Interest
CoR40.1	Notice of Resolution to Wind-up Solvent Company
CoR40.2	Notice of Foreign Registration of Company
CoR40.3	Demand Notice concerning Inactive Company
CoR40.4	Notice of Pending Deregistration
CoR40.5	Application for Re-instatement of Deregistered Company
CoR46.1	Notice of Employee Share Scheme
CoR46.2	Annual Certificate of Employee Share Scheme
CoR46.3	Application concerning rights offer exclusion
CoR46.4	Registration of Prospectus or Letter of Alteration
CoR46.5	Registration Certificate
CoR46.6	Application to exclude information from prospectus
TRP84	Declaration of Coming Into or Out of Concert
CoR89	Notice of Amalgamation or Merger
TRP98	Disclosure of Dealings in Securities
TRP121.1	Disclosure of Acquisition or Disposal of Securities
TRP121.2	Notice of Acquisition or Disposal of Securities
CoR123.1	Notice of Beginning of Business Rescue Proceedings
CoR123.2	Notice of Appointment of Business Rescue Practitioner
CoR123.3	Notice of Decision Not to Begin Business Rescue
CoR125.1	Business Rescue Status Report
CoR125.2	Notice of Termination of Business Rescue Proceedings
CoR125.3	Notice of Substantial Implementation of Business Rescue Plan
CoR126.1	Application for Practitioner's Licence
CoR126.2	Registration Certificate
CoR130	Consent to Commission to act for complainant
CTR132.1	Application for Alternative Dispute Resolution
CTR132.2	Referral for Alternative Dispute Resolution
CTR132.3	Certificate of Failed Alternative Dispute Resolution

FORM NUMBER	DESCRIPTION
CoR134.1	Application for Accreditation
CoR134.2	Registration Certificate
CoR135.1	Complaint
CoR135.2	Notice of Non-Investigation of Complaint
CoR137.1	Notice to Investigate Complaint
CoR137.2	Summons to Provide Evidence to Companies Commission
CoR137.3	Request for Additional Information
CoR137.4	Demand for Corrected Information
CoR138	Notice of Consent Order
CoR139.1	Compliance Notice
CoR139.2	Compliance Certificate
CoR140.1	Referral of Complaint to Alternative Authority
CoR140.2	Notice of Non-referral of Complaint
CTR140	Complaint Referral (to Tribunal)
CTR142	Application for Relief (to Tribunal)
CTR145	Notice of Motion
CTR147	Application for Condonation
CTR148	Notice of Withdrawal or Postponement
CTR151	Notice of Hearing before Companies Tribunal
CTR160	Summons to Appear before Companies Tribunal
CoR168	Notice of Challenging Filed Information
CoR178	Request for Additional Information

All company forms can be accessed on the following website: https://www.cipc.co.za/?page_id=3786


Checklist/Considerations for a Customised Memorandum of Incorporation

Voting Percentages

The ability to move percentages for special and ordinary resolutions (sections 65(8) and (10)) and higher thresholds for fundamental transactions (section 115). To change voting percentages for shareholder resolutions, the MOI must be amended, as alterable provisions can only be changed through it. Director's ratifying MOI breaches via a special resolution avoid damages but risk minority protection if they cannot prevent such resolutions. To mitigate this, the MOI can require all shareholders' approval for ratification, surpassing the 75% Act requirement.

Consider Restrictions on the Powers of Directors

- Increase or decrease the authorised shares;
- Reclassify non-issued shares;
- Classify unclassified non-issued shares;
- Determine the preferences, rights, limitations, and other terms associated with a class not yet determined and not yet issued;
- Amend the rights attaching to classes of shares; and
- Make rules that are binding on the company and shareholders.

 **Note:** *The powers contemplated above are all in any event subject to the standard of conduct, including fiduciary duties and prescribed liability of directors (see sections 75 to 78).*

Directors

The Act provides that most directors may pass a written (round robin) resolution, unless the MOI provides otherwise (section 74).

The Act states that each director has only one vote unless the MOI provides otherwise.

Deadlock Resolution Provisions

If the shareholders or directors are deadlocked, such a deadlock will typically be detrimental to the interests of the company and may be grounds for the winding-up of that company (section 81). Consideration should therefore be given to including a deadlock resolution mechanism in the MOI.

Shareholders

Consider whether for any matters it should be stipulated that shareholders may only decide on these matters in a meeting and that these matters may not be dealt with by way of a written resolution.

Limitations on the Statutory Pre-emptive Right

The statutory pre-emptive right applies equally to the issue of all classes of shares (section 39(2) to (4)). For example, if a private company proposes to issue ordinary shares, all preference shareholders will also have a pre-emptive right to these (ordinary) shares, unless the statutory pre-emptive right is amended by the MOI.

Quorum

The MOI can alter the percentage required for a quorum. The default quorum percentage for a shareholders' meeting, regardless of whether an ordinary or special resolution is being considered, is 25% (section 64).

Consider including additional requirements in respect of meeting quorums; for example, that a specific shareholder must be present at a meeting before a matter can be considered.

General Meetings

Consider whether the company should be compelled, by way of its MOI, to hold annual general meetings (AGMs). In terms of the Act, only public companies are legally obliged to hold AGMs. It is important to note, however, that certain matters that relate to private companies can only be dealt with at an AGM; for example: annual financial statements (AFS) must be presented to shareholders at a shareholders' meeting; and the appointment of the company's auditor must be made at an AGM (section 90).

Whether a private company is compelled by its MOI to hold an AGM or not, it may in any event be good governance practice for the company to have an AGM to ensure that the company's shareholder resolutions related to sections 44 and 45 (financial assistance) and section 66(9) are renewed as appropriate.

Audit

If a company does not meet the Act's requirements that compel it to audit its AFS, the directors of the company may still appoint an auditor (e.g., conduct a voluntary audit). In addition to these scenarios, the MOI may require the company to audit its AFS, in which event the directors will be obliged to appoint an auditor, even where the company does not meet the audit criteria contemplated in the Act. (If the company's MOI has not been updated since the Effective Date of the Act, it is likely that the MOI will require the company to audit its AFS, with the result that the company will not have the option to conduct an independent review.)

5. Bibliography

Cassim, FHI; Cassim, MF; Cassim, R; Jooste, R; Shev, J and Yeats, J. 2021. *Contemporary Company Law, 3rd Ed.* South Africa: Juta & Company (Pty) Ltd.

Institute of Directors Southern Africa. 2016. *King IV Report on Corporate Governance for South Africa.* [Online] Available at:

https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/loDSA_King_IV_Report_-_WebVersion.pdf [accessed: 24 October 2025].

South African Government. 2008. *Close Corporations Act 69 of 1984.* [Online] Available at:

<https://www.gov.za/documents/close-corporations-act-13-mar-2015-1302> [accessed: 24 October 2025].

South African Government. 2008. *Companies Act 71 of 2008.* [Online] Available at:

<https://www.gov.za/documents/companies-act> [accessed: 24 October 2025].

South African Government. 2008. *Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963.* [Online] Available at: <https://www.gov.za/documents/justices-peace-and-commissioners-oaths-act-15-mar-1963-0000> [accessed: 24 October 2025].

SAICA. 2015. *The SAICA Close Corporations Guide.* [Online] Available at:

https://saicawebprstorage.blob.core.windows.net/uploads/resources/THE_SAICA_GUIDE_ON_CLOSE_CORP_May2015.pdf [accessed: 24 October 2025].

SAICA. 2020. *SAICA Companies Act Guide.* [Online] Available at:

<https://saicawebprstorage.blob.core.windows.net/uploads/resources/Companies-Act-guide-15-January-2020-FINAL.pdf> [accessed: 24 October 2025].

SAICA Guide: Determining the Public Interest Score (2023 update).



Copyright © 2025 Institute of Accounting and Commerce of South Africa

First Edition
November 2025

252 Rosmead Avenue, Wynberg, 7708 South Africa
PO Box 36477, Glosderry, 7702 South Africa
Telephone: +27 (0)21 761 6211

Non-Profit Company registration Number 1981/0011981/08

All rights reserved.

No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Institute of Accounting and Commerce of South Africa

Compiled by the Institute of Accounting and Commerce of South Africa