

THE COMPANIES ACT 2008 AT A GLANCE

Overview

You have decided to start a business and you want to incorporate a company. There are some essential things you would need to know before you decide to incorporate a company in South Africa. The purpose of this write-up is to let you know what the essential compliance and pre-incorporation matters arising from the Companies Act, 71 of 2008, are before you embark on your entrepreneur journey.

This information should be considered in conjunction with the Act itself. The simplicity and flexibility reflected in the Act will contribute significantly to promote efficiency and transparency.

DESCRIPTION	PROFIT COMPANIES				NON PROFIT COMPANIES
	PUBLIC COMPANIES "LTD"	PRIVATE COMPANIES "PTY LTD"	PERSONAL LIABILITY COMPANIES " INC"	STATE OWNED "SOC LTD"	NPC
Definition	This is a company that operates for profit. It is allowed to offer its shares to the public. All listed companies must be public companies but not all public companies are listed on a stock exchange.	A private company trades for profit. It may not offer its shares to the public and the transferability of its securities is restricted.	This is a private company operating for profit. Its MOI must state that it is a personal liability company. Directors and past directors are jointly and severally liable for the debts of the company.	A company that is owned by the South African government and listed in the PFMA, or owned by a municipality and is of a similar kind to a government owned company.	A not for profit business (previously known as a Section 21(b) company). It must have a public benefit as its object or an object relating to cultural, social, communal or group interest. Income and property may not be distributed to its members, directors, incorporators and officers.
Incorporation	It may be incorporated by one or more persons.	It may be incorporated by one or more persons.	It may be incorporated by one or more persons. Type of company used mainly by professional associations	It may be incorporated by one or more persons or an organ of state.	It may be incorporated by three or more persons.
Registration	Notice of Incorporation (CoR 14.1) Memorandum of Incorporation (MOI) (CoR 15.1 A-E)	Notice of Incorporation (CoR 14.1) Memorandum of Incorporation (MOI) (CoR 15.1 A-E)	Notice of Incorporation (CoR 14.1) Memorandum of Incorporation (MOI) (CoR 15.1 A-E)	Notice of Incorporation (CoR 14.1) Memorandum of Incorporation (MOI) (CoR 15.1 A-E)	Notice of Incorporation (CoR 14.1) Memorandum of Incorporation (MOI) (CoR 15.1 A-E)

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	PUBLIC COMPANIES "LTD"	PRIVATE COMPANIES "PTY LTD"	PERSONAL LIABILITY COMPANIES " INC"	STATE OWNED "SOC LTD"	NPC
Place of Business	Have a registered address (office) within the Republic of South Africa	Have a registered address (office) within the Republic of South Africa	Have a registered address (office) within the Republic of South Africa	Have a registered address (office) within the Republic of South Africa	Have a registered address (office) within the Republic of South Africa
Annual Returns	Annual return must be filed within 30 business days after the anniversary of the date of incorporation.	Annual return must be filed within 30 business days after the anniversary of the date of incorporation.	Annual return must be filed within 30 business days after the anniversary of the date of incorporation.	Annual return must be filed within 30 business days after the anniversary of the date of incorporation.	Annual return must be filed within 30 business days after the anniversary of the date of incorporation.
Annual financial statements	Financial statements must be prepared within six months of the financial year end and in time to give notice of the AGM	Financial statements must be prepared within six months of the financial year end.	Financial statements must be prepared within six months of the financial year end	Financial statements must be prepared within six months of the financial year end and must comply with the PFMA	Financial statements must be prepared within six months of the financial year end
Financial year	Have a fixed financial year (s27).	Have a fixed financial year (s27).	Have a fixed financial year (s27).	Have a fixed financial year (s27).	Have a fixed financial year (s27).
Changes to Financial year	Company may change its financial year end by filing a form CoR25 with the CIPC which must comply with the requirements set	Company may change its financial year end by filing a form CoR25 with the CIPC which must comply with the requirements set	Company may change its financial year end by filing a form CoR25 with the CIPC which must comply with the requirements set	Company may change its financial year end by filing a form CoR25 with the CIPC which must comply with the requirements set	Company may change its financial year end by filing a form CoR25 with the CIPC which must comply with the requirements set
Is an audit compulsory	Yes	Yes if the company holds assets for another party in excess of R5 million; or <ul style="list-style-type: none"> the public interest score is 350 or more; or the public interest score is 100 or more and the annual financial statements are internally compiled; or it is required by the MOI or by a shareholders' or 	Yes if the company holds assets for another party in excess of R5 million; or <ul style="list-style-type: none"> the public interest score is 350 or more; or the public interest score is 100 or more and the annual financial statements are internally compiled; or 	Yes	Yes if: <ul style="list-style-type: none"> the company holds assets for another party in excess of R5 million; or if it was incorporated by the state, an international entity, foreign state entity or foreign company; or it was incorporated to perform a statutory, regulatory or public function. If an audit is not required, the company must have its annual

		director's resolution or in terms of an agreement.	<ul style="list-style-type: none"> it is required by the MOI or by a shareholders' or director's resolution or in terms of an agreement. 		financial statements independently reviewed.
Is a company secretary required?	Yes	Not compulsory	Not compulsory	Yes	Not compulsory
Is an AGM required?	Yes	Only if specified in MOI	Only if specified in MOI	Only if specified in MOI	Only if specified in MOI
Minimum number of directors required?	3	1	1	As per legislation	3
Minimum number of Members required?	1	1	1	1	Does not have members but three or more persons are required to incorporate a NPC.
Offering of Securities to the Public?	Chapter 4 of the Act is applicable.	MOI restricts transferability of shares to the public.	MOI restricts transferability of shares to the public.	Chapter 4 of the Act is applicable except where a conflict with other legislation overrides this requirement.	Not applicable.
Keeping of company records	Yes (s 24)	Yes (s 24)	Yes (s 24)	Yes (s 24)	Yes (s 24)
Regulatory Bodies	CIPC JSE	CIPC	CIPC	CIPC	CIPC

Disclaimer: This brochure is for general information only and does not constitute legal advice. Readers should seek their own professional advice on any concerns.

Author: Adv. Tina Rabilall - CIPC