

COMPANIES ACT FLYER

September 2012

TIME IS RUNNING OUT

Companies are reminded that they have until 30 April 2013 to harmonise their old memorandum and articles and shareholders agreement with the provisions of the Companies Act of 2008 (new Act).

The existing memorandum and articles of most companies will undoubtedly contain provisions that are not in harmony with the new Act. Currently these provisions of the existing memorandum and articles generally override the provisions of the new Act. This interim dispensation will come to an end on 30 April 2013, after which the new Act will override conflicting provisions of the memorandum and articles.

Most existing shareholders' agreements contain provisions that are in conflict with the company's memorandum and articles and in some instances with the provisions of the new Act. Currently these provisions of a shareholders agreement typically override the conflicting provisions of the existing memorandum and articles and the new Act. This interim dispensation will come to an end on 30 April 2013, after which the new Act and the memorandum and articles (now known as a memorandum of incorporation or MOI) will override conflicting provisions of the shareholders agreement.

It is therefore imperative for companies to bring their existing memorandum and articles and shareholders agreement in harmony with the new Act, and to align any shareholders agreements with their MOIs as well. This would involve, among other things, incorporating many of the provisions contained in the shareholders agreement into the MOI, to ensure consistency between the two documents. This is critical as after 30 April 2013 the MOI will override the shareholders agreement in the case of any inconsistency. As there may be a flood of filings of new MOIs close to the 30 April 2013 deadline, this will test the capacity of the Companies and Intellectual Property Commission to deal with these filings timeously. Companies are advised to effect the necessary changes as soon as possible.

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In our experience the harmonisation of a shareholders agreement with the new Act and MOI of a company is a complex and time consuming exercise. This often raises issues requiring discussion (and sometimes renegotiation) between shareholders and the company and should not be delayed.

The practitioners in the Corporate and Commercial Practice of Cliffe Dekker Hofmeyr are well suited and experienced to assist you in this process or with any other Companies Act enquiry. Please contact any of our team listed below.

CONTACT US

For assistance on any aspect relating to the new Companies Act, please contact:



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