

07022020 Legislative Update: Companies Act, of 2008: Are you ready to submit your next Annual Return with the CIPC?

The CIPC has implemented a Companies Compliance Checklist, which is mandatory to be completed since **1 January 2020** before the following types of companies can submit their Annual Returns:

- Incorporated(Inc)
- Proprietary Limited ((Pty) Ltd)
- Limited (Ltd)
- State-Owned Company (SOC)
- Non-Profit Company (NPC)

Consequences of supplying false information to the CIPC

A person will commit an offence, who knowingly provides false information to the CIPC and if such person is convicted, he is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment. (Sections 215(e), 216(b))

Please note: Compliance with these minimum specific sections does not constitute permission not to comply with the entire Companies Act, its Schedules and Regulations.

This Checklist lists the applicable Section, Schedule and Regulation's number and the respondent need to indicate whether the company has complied or not or otherwise, indicates that the section is not applicable to the company.

The checklist does not provide any details of what will be required from a company to answer these questions.

This can become a nightmare for especially small or medium size companies, start-ups, personal liability companies or non-profit companies, which might not have a company secretary or compliance department.

CIPC Enforcement Compliance Checklist

Did the company comply with the following sections during the previous calendar year?

| Section | Section Title | Example Compliance Questions ¹ |
|---------|--|--|
| 4 | Solvency and liquidity test and prevention of reckless trading | Does the company have a formal process in place to ensure that the solvency and liquidity test is performed in accordance with the provisions of section 4? |
| 15 | Memorandum of Incorporation ("MOI"), shareholder agreements | <p><u>Memorandum of Incorporation</u></p> <ul style="list-style-type: none"> • Has the company filed a MOI with CIPC? ○ Was this MOI amended by filing a CoR15.2 form with CIPC? <p><u>Shareholder agreement</u></p> |

¹ Please note that this checklist is not complete, it only contains a few example questions to be asked, when verifying compliance.

| Section | Section Title | Example Compliance Questions ¹ |
|---------|---|--|
| | and rules of company | <ul style="list-style-type: none"> • Is there a shareholder agreement in place in respect of the company? ○ If "yes", have the provisions of the shareholder agreement been aligned with the provisions of the Act and the MOI? <p><u>Company Rules</u></p> <ul style="list-style-type: none"> • Does the company have company rules? ○ If "yes", does the MOI make provision for such rules? |
| 26 | Access to company records | Does the company's PAIA manual include access requested to information in terms of sections 26 and 31 of the Companies Act by persons with and without a beneficial interest in the company? |
| 27 | Financial year of company | <ul style="list-style-type: none"> • Does the company's financial year end correspond with the date indicated in the Notice of Establishment? ○ If not, was it amended by a board resolution? ○ If "yes", was a CoR 25 filed with the CIPC? |
| 28 | Accounting records | <ul style="list-style-type: none"> • Do the company's accounting records include? <ul style="list-style-type: none"> ○ the asset and liability records of the company as prescribed? ○ the records of property held by the company in a fiduciary capacity and all prepayments, deposits, membership fees, other monies and any other property belonging to consumer held in the company's capacity as a supplier of goods or services? ○ a record of the company's revenue and expenditures as prescribed? |
| 29 | Financial statements | <ul style="list-style-type: none"> • What types of financial statements does the company prepare? • Does the company ensure that its financial statements comply with the necessary requirements? |
| 30 | Annual financial statements | <ul style="list-style-type: none"> • If the company provides a summary of its financial statements, does it comply with the requirements of Financial Reporting Pronouncement 5? • Was the company's latest AFS prepared within 6 months of its FY? |
| 32 | Use of company name and registration number | <ul style="list-style-type: none"> • Is the company's registered name and registration number included on its all notices and official publications issued by the company, including notices or other official publications in electronic format? |
| 33 | Annual return | <ul style="list-style-type: none"> • Was the latest annual return filed within the allocated timeframe? |
| 44 | Financial assistance for subscription of securities | <ul style="list-style-type: none"> • Has the company provided financial assistance for the issuing of shares during the current financial year to anybody who wants to subscribe to any option, or any securities, issued or to be issued by the company or a related or inter-related company? ○ If "yes", was the correct procedure been followed, as prescribed? |
| 45 | Loans or other financial assistance to directors | <ul style="list-style-type: none"> • Has the company provided financial assistance for the issuing of shares during the current financial year to a director or prescribed officer of the company or of a related or inter-related company? ○ If "yes", was the correct procedure been followed, as prescribed? |

| Section | Section Title | Example Compliance Questions ¹ |
|---------|--|---|
| 50 | Securities register and numbering | <ul style="list-style-type: none"> Does the securities register comply with the requirements of section 50 (1)(b) and Regulation 32? |
| 61 | Shareholders meetings | <ul style="list-style-type: none"> Does the company ensure that the resolutions are made in accordance with the requirements of the MOI? |
| 66 | Board, directors and prescribed officers | Does the company have the minimum number of directors as specified in the Act or its MOI? Has the company formally identified its prescribed officers? |
| 69 | Ineligibility and disqualification of persons to be director or prescribed officer | Does the company undertake a due diligence on prospective directors to ascertain whether they are suitable and eligible and not been disqualified for consideration before they are nominated for appointment i.e. whether they have the right knowledge, skills and personal attributes to effectively fulfil their legal duties? |
| 70 | Vacancies on board | If a vacancy has arisen on the board during the period under review, has it been correctly filled as per section 70(3)? |
| 71 | Removal of directors | Has any director been removed by the shareholders or the board during the period under review? If "yes", has the correct procedure been followed in such instances? |
| 86 | Mandatory appointment of company secretary | Is the company required to appoint a company secretary? If "yes", has the company appointed a company secretary (this includes the services of a firm (juristic person or partnership) performing the duties of a company secretary), which comply with the provisions of sections 86 or 87 and Principle 10 of King IV? |
| 90 | Appointment of auditor | Is the company required to appoint an auditor? If "yes", has the company appointed an auditor (this includes the services of a firm (juristic person or partnership) performing the duties of an auditor), which comply with the provisions of sections 90(2)? |
| 92 | Rotation of auditors | Does the company ensure that the rotation of directors is properly done in alignment with section 92? |
| 94 | Audit committees | Is the company required to appoint an audit committee in terms of its MOI or the Companies Act? If "yes", has the company's shareholders appointed members to the audit committee during the previous AGM or an annual shareholders' meeting for the current financial year in order to ensure compliance with sections 94(2) and (4) of the CA? |
| R21 | Registered office of company | Is the company's registered address the address of an office which is maintained by the company and not the office of a third party? |
| R43 | Social and Ethics Committee | Is the company required to appoint a social and ethics committee? If "yes", has the committee been correctly appointed and constituted? |
| Sch 1 | Provisions concerning Non-Profit Companies | If the company is a non-profit company, does its Memorandum of Incorporation set out at least one object of the company? |

Please contact our Governance Risk and Compliance Department if you require any assistance in this regard.